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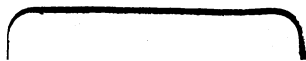
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# LETTERS.

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THE RIGHT HONOURABLE

## LORD MANSFIELD.

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(Stuart)

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LETTERS

TO

THE RIGHT HONOURABLE

LORD MANSFIELD,

FROM

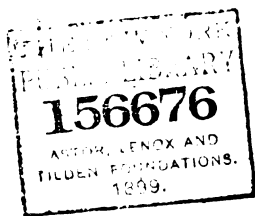
ANDREW STUART, Esq;



DUBLIN:

PRINTED IN THE MONTH OF MARCH 1778.

PE



# L E T T E R I.

MY LORD,

**I**T is not from want of attention to your Lordship, that I have hitherto abstained from doing myself the honour of writing to you. With great truth I can say it, you have not been absent from my thoughts, during any one complete day for more than three years past; but the subject on which I meant to address your Lordship, was too interesting, and agitated me too strongly, to admit of my commencing this correspondence sooner.

A long course of bad health, increased perhaps by too much sensibility in respect to certain events, with which your Lordship stands deeply connected, made it impossible for me to satisfy, so soon as I wished, the earnest desire of communicating to you, my genuine sentiments; they relate to a subject very interesting both to your Lordship and to me, and in many respects interesting to every lover of justice or humanity.

Those who are injured have a right to complain; and it is the peculiar felicity of the natives of this island, that there are no restraints upon the communication of truth, excepting those which the rules of decency, and of attention to that good order which is so essential to the well-being of every state, may necessarily require.

Restraints such as these, every ingenious mind must feel within itself, independant of the dictates of authority, or positive institution.

If in the course of this correspondence, any expression escape me, inconsistent with the respect

due to your Lordship's situation, and distinguished talents, sure I am it is far remote from my intention; no man can have a higher admiration of your extensive genius and abilities than I have; and I can appeal to all who know me, whether my principles, as well as the natural turn of my mind and temper, have not ever disposed me to be a sincere lover of order.

Nothing appears to me more disgusting and detestable than those abuses of liberty which we have daily occasion to observe, and those illiberal and indiscriminate attacks made upon all characters, however respectable. They are doubly detestable, both on account of their intrinsic enormity, and because they proceed not from the heart, or the real opinion of the authors, but are the suggestions of faction or of malice, conveyed to the public by those, who meanly prostitute their talents, in writing for others, what they neither think nor feel themselves.

What I have to offer to your Lordship, relates not to public affairs, or to your conduct in the political line of this country; it relates to your conduct in the public administration of justice, an object inferior to none in its importance and extensive consequences, and in which every member of the community is deeply interested: Every man has a right to attend to all the steps of your conduct in that capacity, and to declare to yourself, and to the world, the result of his observations. If they are founded on genuine facts, it is of importance that they should not be concealed; if ignorantly, or wickedly, he endeavour to misrepresent your Lordship, the attempt will deservedly recoil upon himself to his own disgrace, and instead of diminishing, will only serve to add lustre to your character.

The

The particular opportunities I have had of attending minutely to your conduct in your judicial capacity upon some memorable occasions, would of themselves be sufficient to entitle me to communicate my observations, and to exercise that right which belongs to every member of the community in this free and enlightened country.

But, my Lord, if such a right stood in need of additional aid, I have peculiar reasons and motives, which all mankind will allow to be sufficient to authorise this address.

When it shall appear that I have had the strongest reason that ever man had to complain of injury and injustice received from your Lordship; When it shall be shewn that you availed yourself of your exalted judicial situation to attack in a public assembly a private man who had no opportunity either of obviating that attack, or of answering for himself; And when the flagrant injustice of this attempt shall, in the course of these Letters be laid open to public view, it will then be allowed, that my right thus to address your Lordship is of the strongest and most unquestionable nature.

After tracing the great outlines of a certain memorable cause, in which this sacrifice of me was attempted, with a view, perhaps, to reconcile the world to the opinion you gave in that cause, I shall have occasion, towards the close of this correspondence, to state my own situation and conduct in that contest, to give the reasons which have hitherto prevented me from taking this method of doing myself justice, and to show the impossibility of my remaining longer silent, without seeming to acquiesce in those things which I have so just reason to complain of.

What I have to say with regard to myself in these particulars shall be postponed until I have ex-



amined your Lordship's conduct in your judicial capacity, particularly in certain points connected with the attack you endeavour to make upon me.

In that examination, I must be permitted to review your conduct with a becoming freedom. I shall confine myself to facts which consist with my own knowledge; and these shall neither be exaggerated nor extenuated. If in any of them your Lordship can shew me that I am mistaken, I shall be proud to take the first opportunity of correcting my error. I mean to state fairly the facts which I know and believe to be true, and to lay before you, without reserve, the genuine reflections and emotions of my breast resulting from these facts. This may perhaps sometimes produce a little warmth, but, I hope, will never carry me beyond the bounds of good manners.

During several years, I embraced every opportunity that offered, of attending to your Lordship's decisions and arguments, particularly in a great assembly, where your talents have long been justly admired; the ability and eloquence ever conspicuous in your reasonings always captivated me, and seldom failed to produce strong admiration of such superior genius; but I must be allowed to add that when the circumstances of the cases that came before you happened to be particularly known to me, and when I had an opportunity of canvassing your arguments and conduct with men of abilities, also well acquainted with the circumstances, and whose judgements you would yourself allow to be respectable, we have frequently found reason to confine our admiration to the ability of the reasonings made use of by your Lordship in support of the side you espoused.—Our conviction was not on the same side with our admiration.

How could it be otherwise, my Lord when we could not but observe, that the same rules of justice

rice were not applied to similar cases; and that, without any difference of circumstances to authorise it, your modes of reasoning were not uniform. They were varied at pleasure, always able, and generally successful.

To counsel at the bar, such variety is permitted. Their pleadings do not establish precedents, and in them an eagerness for the success of their client is allowable; but a judge can have no client,—ought to have no friend in his judicial capacity.

In the times of Lord Hardwicke, and of other eminent judges, whose names deserve ever to be respected in Britain, it was not a difficult matter for men of knowledge and experience to foretell what decision would be given on particular cases; because they knew, that these judges, revering the laws of their country, endeavoured to make jurisprudence a science founded on solid and fixed principles; they studied uniformity in their decisions, preferring it to the vain admiration attending the appearances of superior genius, or the applause of individuals, who might profit by the deviations from established principles.

Of late years the case has been much otherways: the best and ablest men, I am assured, can scarcely ever foretell upon what grounds any important cause will be taken up and decided by your Lordship; and from what has fallen under my own observation, in some remarkable instances, I cannot refuse my assent to this prevailing opinion.

General assertions, without specifying particular facts, deserve little credit, and are always unsatisfactory. It is my intention to recal to your memory the particulars of your conduct and the arguments you employed in two very memorable and important causes lately decided; both of them causes which greatly excited the public attention; and as they will hereafter be considered as monuments

monuments of the principles established by your Lordship in one of the most capital branches of the laws and customs of this country, to wit, *the rules of evidence*, I shall, after premising a few general observations, endeavour to give as briefly as possible a distinct view of the facts, and of the arguments made use of by your Lordship in both cases.

I had been accustomed to think, that, in judging upon evidence, a matter of such infinite importance in the constitution and jurisprudence of every well-regulated state, there were certain rules established, which in every court, and in every country, were received as most invaluable guides for the discovery of truth. For instance, when it appeared that on the one side there was *forgery and fraud* in some of the material parts of the evidence, and especially when that forgery could be traced up to its source, and discovered to be the contrivance of the very person whose guilt or innocence was the object of inquiry; in such a case, I have always understood it to be an established rule, that the whole of the evidence on that side of the question must be deeply affected by a deliberate falsehood of this nature.

The natural and necessary effect of such a practice upon the minds of judges possessed of discernment and candour, is to make them extremely suspicious of all the evidence tending to the same conclusion with the forged evidence; parole testimony in support of it will be little regarded; the forgery of the written evidence contaminates the testimony of the witnesses in favour of the party who has made use of that forgery, and nothing will gain credit on that side, but either clear and conclusive written evidence, free from suspicion, or the testimony of such a number of respectable, disinterested, and consistent witnesses,  
speaking

speaking to decisive and circumstantiate facts, as leaves no room to doubt of the certainty of their knowledge, and the truth of their assertions,

On the other hand, the proof of a forgery such as has been described, must also have the effect to gain a more ready admission to the evidence of the other party. If that evidence be consistent, if it be established by the concurring testimony of a croud of witnesses, and supported by various articles of written and unsuspected evidence, the bias of a fair mind will be totally in favour of the party producing such authorities, and against that which had been obliged to have recourse to the forged evidence.

These, my Lord are the rules which I had been taught to believe always had obtained, and ever would obtain, in questions of this nature.—But it was my fate to hear principles of an opposite tendency established by your Lordship on a very memorable occasion.

This occurred in the decision of one of the most important causes that ever came before a court of judicature: yet, if there ever existed a case where in the above-mentioned principles, in their fullest extent; ought to have operated and governed, it was in that cause. They did receive the effect and operation due to them in the court where the cause was first judged, and where the evidence had been attended to and examined during the course of several years; but when it came to be judged in the last resort, the sentiments and doctrine then delivered by your Lordship, proceeded on a very different plan. I cannot suppose that this happened from the true principles being unknown to you; it must have been from some other cause.

Your Lordship can be at no loss to discover the case I allude to, for there are in the DOUGLAS CAUSE some circumstances, which, if I mistake

not

not, must, at least to the extent of your feelings, produce strong sensations in your breast, whenever allusions are made to that decision.

The fate and circumstances of that memorable cause are recent in the minds of every one, and I trust that they will long be remembered, as well as the part taken by your Lordship during the whole progress, and at the final decision of that litigation.

Short as the interval has been since that decision, there has already occurred another memorable cause, which came under the consideration of the same tribunal, the house of Lords, oftener than once during the course of the year 1771, I mean the *Anglesea Cause*, in which, as in that of Douglas, the decision depended upon the canvassing of evidence, and upon the establishing of just principles for the direction of the judgement in weighing the authorities produced on both sides.

In the one case, as well as in the other, it became necessary to consider the consequences of a *forgery* which had been employed in some of the material parts of the evidence; for, besides other circumstances of similitude between the two cases, there was this remarkable one, that in each, forgery was objected to the most material part of the written evidence produced in support of the state of filiation claimed by the person whose state was the object of the contest.

There was this difference however, that in the one case there was only a suspicion, or divided opinion with regard to the *forgery*, in the other it was clear and undisputed. The forgery in the case of Anglesea, as it depended chiefly on ocular inspection, appeared to some palpable and evident; others are quite of a different opinion, and several of the noble Lords thought that the evidence amounted only to a suspicion of that crime.

Your

Your Lordship knows that it was chiefly, if not entirely, on account of this forgery, and the influence of it on the other parts of the evidence, that the claimant in the Anglesea cause was denied the state and rights of son of the Earl of Anglesea; and this too, at the distance of near six years after he had been put in possession of the Irish peerage of Viscount Valentia, in consequence of a report made by the Attorney and Solicitor General of Ireland, which having been transmitted to his Majesty, the claimant was summoned to the parliament of Ireland, and, in December 1765, took his seat as Viscount Valentia and Baron of Mount Norris in that kingdom.

Your Lordship also knows that in the Douglas cause there was not only a *suspicion*, but *certainty* of forgery, traced to the very person on whose guilt or innocence the cause must depend, proved by the clearest evidence, and even acknowledged at the bar by the counsel on that side of the question; notwithstanding which, the person whose interest you supported in that cause, was by your Lordship declared to be the son of Lady Jane Douglas and of Sir John Stewart, the author of the forged evidence relative to his birth; and in consequence of the judgment pronounced in the Court of appeal, now enjoys the name and wealth of the Douglas family.

To make the contrast more compleat, this happened after the pretensions of the claimant, now Mr. Douglas, had been canvassed several years by the Supreme Court of Judicature in Scotland, where it was solemnly decided that he was not the son of Lady Jane Douglas.

These two cases, so different from each other in their fate, contain circumstances which, by comparison, tend mutually to throw light on each other; and as they will assist us in discovering your  
 Lordship's

Lordship's principles and practice in matters of evidence, I must beg leave to recal them a little more particularly to your memory.

In the Anglesea cause, the question was, whether the person claiming the dignities and honours belonging to the family of Anglesea, was the legitimate son of the late Earl of Anglesea, or was of spurious birth; and this question depended upon the truth of the fact maintained on the part of the claimant, that the Earl of Anglesea was married to the present Countess Dowager of Anglesea in the year 1741, prior to the birth of the claimant their son, who was born in the year 1744.

In support to this fact of the marriage in the year 1741, there was produced, besides a variety of parole evidence, a certificate signed by the clergyman Lawrence Neal, who asserted that he had married them on the 15th September 1741, to which was subjoined the subscriptions of two witnesses to the marriage, Nixon Donovan and Charles Kavanagh. This certificate fell under the suspicion of forgery, in that part of it which related to the subscriptions of the two witnesses, particularly the subscription of Charles Kavanagh, which from ocular inspection, and the comparison of it with the certain and acknowledged subscriptions of Charles Kavanagh, and from other circumstances, appeared to be forged.

In the Douglas cause, the question was whether Lady Jane Douglas, in the 51st year of her age, was delivered of male twins at Paris on the 10th day of July 1748, in the house of a Madam le Brun, and by the assistance of a Pierre la Marre, Accoucheur. On the truth of these facts depended the filiation and state claimed by Mr. Douglas.

It was denied by his opponents that he was the son of Lady Jane Douglas: they maintained, that the whole story of Lady Jane's pretended delivery

was

was a fraudulent contrivance between her and her husband, and their confidant Helen Hewit. No evidence whatever, either written or verbal, besides the assertions of these three persons, as produced in proof of the actual delivery at Paris ; but there were produced in support of it, four letters, written in the name of the supposed man-midwife Pierre la Marre, and addressed to Sir John Stewart. One of the letters was in substance a certificate of the delivery, of the date on which it was supposed to have happened, and of its being a delivery of male twins, with several other essential circumstances. All these four letters were, in the course of the trial, incontestably proved, and at last acknowledged to have been *forged*.

Thus the motive and object of the *forgeries* in each case was the same,—namely, to support the capital facts in question,—in the one case, the Marriage, in the other, the Delivery.

But the forgery in the Anglesea cause was in support of a very credible fact, the marriage of the father and mother of the claimant in the year 1741 ; a fact, which contained in itself nothing unnatural, improbable, or difficult of belief.

The forgery in the Douglas cause was in support of a most extraordinary fact, Lady Jane Douglas's delivery of two sons at a birth, in the 51st year of her age.

To have a child at that age is very uncommon. That in her situation with her brother the Duke of Douglas, it should be a son instead of a daughter, was fortunate ; but that two sons should be produced at a birth, where they were so much wanted, and as her first-fruits, in this advanced period of her age, approached so much to the marvellous, as to be in a very high degree improbable. A fact, so circumstanced, as that the history of human nature affords very few if any instances



stances truly similar, must be acknowledged not only to be improbable, but incredible, until it be well attested.

If it be true, that a very improbable or extraordinary fact requires to be supported by evidence unsuspected, and much stronger than a probable one, it must also be true, that when false or forged evidence is employed in support of that improbable fact, the influence of it, upon all the other parts of the evidence produced in support of the same fact, ought to be more powerful and decisive than in the case of a probable and natural one.

In the Anglesea cause, neither Lord Anglesea nor his wife were the persons who forged the certificate of the marriage in 1741. It is all in the handwriting of Laurence Neal the clergyman, who is supposed to have married them in 1741; and the only parts of the certificate thought to be forged are the subscription of the two witnesses to it particularly the subscription of Charles Kavanagh; neither were these subscriptions supposed to be forged either by Lord or Lady Anglesea personally, but this forged certificate was found in the custody of Lady Anglesea, where it is said to have remained from the year 1741 to the year 1752, when first produced, and it remained in the same hands till it was deposited in the Spiritual Court of Dublin in 1762.

In the Douglas cause, the four forged letters were not forged by indifferent persons, or third parties, but by Sir John Stewart himself, the supposed father of the claimant in that cause. This fact was proved by the most irresistible evidence, and in the course of the cause was acknowledged by the counsel on that side. The participation of Lady Jane in that forgery, was also proved by convincing circumstances, and all these forged letters were found in the custody of Lady Jane Douglas.

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They were produced in the trial, as proofs in favour of the person claiming to be her son. Sir John Stewart was examined with regard to them, and solemnly and repeatedly maintained, before a court of justice, that two of them were originals, and two of them copies of letters which he had actually received from Pierre La Marre; the fallhood of both which assertions, became so palpable in the course of the trial, that the whole account given by him of these letters, and given with a solemnity equal to an oath, was admitted to be utterly void of truth.

In the Anglesea cause there was but one single act of forgery, that of the subscriptions of the witnesses to the certificate, which consists but of three lines relative to one single fact, the marriage of Lord and Lady Anglesea on the 15th September 1741.

In the Douglas cause there was a complication of forgeries: For, besides a variety of material letters from Sir John Stewart, falsely dated from *Rheims*, at the critical period in July 1748, while he and Lady Jane were at *Paris*, and one upon the same plan from Lady Jane herself, there were four several letters produced, which, from their contents and subscription, had the appearance of letters from the person who had delivered Lady Jane, but in fact were all of them forged by Sir John Stewart himself; three of them dated in the year 1749, and the last of them dated in 1752. The contents of these letters related to various essential particulars: they were meant to support not only the delivery of Lady Jane of male twins, at Paris, on the 10th of July 1748, by the assistance of Pierre La Marre, and in presence of certain witnesses, but also to support the extraordinary fact of one of the children's being left to the charge of the man-midwife, during 16 months, while the infant was separated from his

supposed parents, and invisible to all the rest of the world.

In the Anglesea cause, the simple fact in question was, whether Lord Anglesea had been privately married to Lady Anglesea, on the 15th September 1741. The assertion on the part of the claimant was, that there had been such a private marriage, and that the only witnesses to it were Lawrence Neal, who performed the ceremony, and Nixon Donovan and Charles Kavanagh. From the very nature of the assertion, this fact admitted of no direct proof, but the testimony of these three persons either verbal or written.

In the Douglas cause, the fact in question was more complicated, and if real, must have afforded various means for ascertaining its truth. There are such a variety of circumstances attendant upon real delivery, and consequent to it, especially a delivery of twins, that there can be no want of witnesses qualified to vouch such material facts as will afford conviction of the truth.

Notwithstanding this advantage of situation in favour of the claimant in the Douglas cause, it appears that there was much more direct and collateral evidence in support of the fact disputed in the Anglesea cause, and infinitely less evidence against it, than happened in that of Douglas.

There were in the Anglesea cause, three witnesses, only who deposed to circumstances contradictory to the supposition of Lord Anglesea's having been married in 1741. Two of them spoke to circumstances vague and indecisive, and though the evidence of the third was much more precise and important, particularly with regard to the forgery of the certificate, yet that testimony was considered as liable to very great objections, and was severely animadverted upon by some of the Peers, who at the

the same time delivered their opinions against the authenticity of the marriage.

On the other hand, there was a variety of evidence, either direct or collateral, in support of that marriage, and of the certificate 1741. The present Countess Dowager of Anglesea, a party indeed interested in the event, expressly swore to it, and attested that the marriage was performed by Lawrence Neal, in presence of Nixon Donovan and Charles Kavanagh: there was strong and clear evidence also that the late Earl of Anglesea did, on repeated occasions, assert and acknowledge his private marriage in 1741. Several witnesses concurred with regard to their hearing of that marriage, and of their knowing that Lady Anglesea was treated as Lord Anglesea's wife; and they deposed to their belief of the marriage. There was a very solemn avowal of the private marriage, at the time of the public ceremony of marriage in the year 1752, which was then expressly declared to be only a repetition of the ceremony; and upon that occasion there was drawn up and signed by nine persons present a genuine certificate to that purpose.

Lawrence Neal, the clergyman who married them in 1752, declared to a numerous company then present, that he had formerly married them in 1741, and that he had drawn up and signed a certificate thereof. Further, Lord Anglesea, who is represented in the claimant's case as having been in a declining state of health during the latter months of his life, and as a man very regular in devotion and using frequent prayers in his family, at which he constantly assisted with great appearance of fervour; this man, I say, acknowledged to his last moments the claimant to be his legitimate son; and in his last will, executed in the year 1760, declared the claimant and his sisters to be his legitimate children, born since his marriage

with their mother; he bequeathed considerable portions to these his daughters, and left his real estates to his son the claimant.

In weighing the merits of the Anglesea cause, the *forgery* of the certificate had the effect to vitiate and discredit the whole of this evidence. The marriage of the present Countess of Anglesea to the late Earl, in Sept. 1741, on which the claimant's legitimacy depended, was deemed to be a fiction, and several of the witnesses who had deposed in support of it were considered as perjured.

In the Douglas cause the situation of the proofs for and against the delivery in question, exhibits a very different picture from what has now been given of the proofs for and against Lord Anglesea's marriage. In one respect indeed there was a resemblance, so far as the claimant in the Douglas cause was acknowledged by Sir John Stewart and Lady Jane Douglas to be their son, and there was a similar perseverance in that general acknowledgment; but the capital fact in question, the *delivery*, stands unsupported by any genuine proof; and the specification of particulars, received from the husband and wife on that subject, was proved to be false.

There was no certificate from Madam Le Brun or her daughter, the supposed witnesses to the delivery; no Genuine certificate from La Marre the man-midwife, or any genuine letters from him either on the subject of the delivery, or of the youngest child, supposed to be committed to his care during sixteen months; in short, no evidence that any person whatsoever at Paris had direct personal knowledge of the delivery; not only so, but no discovery of the house of Madam Le Brun, nor any traces that any such person had ever existed.

This very extraordinary fact, of Lady Jane's delivery of twins in the 51st year of her age, which, if true, admitted of such variety of proofs, rested  
therefore

therefore on the direct evidence of Helen H wit, their confident, to whom falsehood and perjury in various particulars was objected, and on the indirect evidence arising from a proof of pregnancy, a matter in itself so fallacious as to be incapable of certain proof; besides the many strong objections which the proof of appearances of pregnancy in this case laboured under

On the other hand, there was an amazing variety of direct and circumstantiated evidence tending, by necessary inference, to shew the falsehood of the delivery; such an assemblage of separate and independent proofs, all verging to the same center, as perhaps have seldom, if ever, occurred in any case whatsoever.

To complete the contrast between the Anglesea and the Douglas causes, it will be remembered, that, in the latter, the party in support of whose birth the gross and incontestible forgeries were employed, triumphed over all the evidence produced against the truth of the contested and extraordinary delivery. These forgeries were not allowed to communicate their influence to any one particle of the evidence on the side which your Lordship chose to support, but the whole of the evidence produced on the side which was free from suspicion of forgery, was by your Lordship set at nought.

Such were the facts, and such the fate of these two celebrated and important causes. The very different reception which the forgeries, and the whole tenor of the evidence, in these two cases, have met with, may by some be considered merely as an object of curiosity; but, in my mind, it is such as deserves the most serious attention of every member of the community animated with a love of justice.

That it was chiefly owing to your Lordship that the forgeries in the Douglas cause were innocent

and harmless to the guilty party, will appear from the manner of your stating and arguing upon that matter in the Douglas cause, contrasted with the principles admitted by yourself in that of Anglesea.

Those who have only heard of your Lordship's giving your voice in favour of Lord Anglesea's legitimacy, may possibly imagine, that your sentiments and conduct were consistent in both cases ; but as I attended very minutely to your argument and expressions on both occasions, it may perhaps be in my power to undeceive them.

Your Lordship, indeed, gave your voice in favour of the legitimacy claimed by the son of Lord Anglesea, and the tendency of your speech was in his favour ; but on what principles was it that you supported his cause ? Not on a disregard of forgery, or on a denial that the most decisive weight was due to it, when clearly ascertained ; but merely on this ground, that your eyesight was not good enough to discover the forgery from ocular inspection, and the comparison of the hand-writings, You said, that in your mind it amounted only to a *doubt* or *suspicion* of forgery ; and the doctrine you laid down, and press'd home upon their Lordships on the day of the final decision, was this, “ That  
 “ when there is on the one side positive, clear, and  
 “ consistent parole evidence, and the other only  
 “ doubt or suspicion of forgery, you thought it the  
 “ duty of every Lord, to whose mind the matter  
 “ appeared in that light, to be governed by the parole evidence, and not rashly to presume that  
 “ Lady Anglesea, and several other witnesses in  
 “ this cause, were perjured :—That it would be  
 “ giving too great an authority to a mere doubt or  
 “ suspicion of forgery, to allow it to outweigh the  
 “ whole of the parole evidence, and to infer an  
 “ imputation of perjury against Lady Anglesea,  
 and

“ the other witnesses who had deposed in support  
“ of the marriage and of the certificate.”

I am far from meaning to arraign this doctrine, or to convey any insinuation of blame to your Lordship for making use of it. Where there is but a slight suspicion of forgery, it is perhaps the safest rule, to be guided by the parole evidence, if clear, positive and consistent. Upon this principle, I am persuaded, those peers acted who gave their voice on the same side of the question with your Lordship. Their honour and integrity are so well known and established, that no man can doubt of their acting upon the justest principles; and as the proof of the forgery came at last to depend chiefly on the comparison of hand-writings, and the faculty of distinguishing what was genuine from what was forged, it is a matter of that sort which must naturally present itself to different minds with different degrees of evidence.

At the same time, it cannot admit of doubt, that those noble lords who were convinced of the forgery acted upon just and solid principles, when they gave their voice against the fact asserted in that forged certificate, and when they suffered the impressions arising from that forgery to cancel all the positive parole evidence in favour of the fact which required to be supported by the aid of forgery: they admitted the rule, that wherever a forgery appears, the parole evidence in support of the same fact becomes tainted, the faith otherwise due to it is not so easily granted.

In thus deciding, they acted agreeably to the dictates of conscience and of sound reasoning; they followed the principles which have been established among all nations in matters of this nature, principles which that day did not escape your Lordship's recollection; for they decided agreeably to the pre-



cise rules which in this cause you recommended, whenever there is a clear conviction or persuasion of forgery

This leads me to that part of your Lordship's speech which made the deepest impression on my mind, and on the minds of several persons present, who were also well acquainted with your method of arguing in the Douglas cause.

After various repetitions of the principle, that a doubt or mere suspicion of forgery was not sufficient to cancel positive parole evidence, and after having communicated again and again to their Lordships the imperfection of your eye-sight, which you described as very insufficient for the detection of forgery from ocular inspection, you said, that you did not doubt but many of their Lordships, who had better eyes than you, might be able, from inspection and comparison of the hand-writings, to satisfy themselves, and be clearly convinced of a forgery in this case; if so, that they might safely reject the evidence produced for the claimant. Upon this occasion you expressed yourself to this purpose, and as nearly as I can recollect in these precise words: "*If any of your Lordships is clearly convinced, that the certificate of the marriage is a forgery, your judgement must be regulated by that conviction; you must disbelieve the positive parole evidence on the side of the claimant, swear it who will.*"

These were your words; I took them down in writing the day of the decision, and shewed them recently to others, who had also been present, and who concurred with me as to the accuracy of the note taken.

The doctrine thus delivered by your Lordship does you no discredit. It is a true maxim, That truth stands not in need of the aid of forgery; and it is a fair inference from that maxim, that where  
forgery

forgery is employed, all the parole evidence, tending to the same conclusion, must be deeply affected, and liable to suspicions destructive of its credibility.

Happy would it have been for the interests of truth, and the dignity of your own character, if the same principles, in the decision of similar causes, had always been admitted by your Lordship; and if their influence had been powerful enough to direct your conduct with that uniformity and consistency which are the best ornaments of a judicial character.

But how is it possible, my Lord, to reconcile this acknowledgment of your principles in matters of forgery, with the declarations and arguments uttered from the same lips in the Douglas cause? There was here no room left for your pleading natural infirmities to disqualify you from judging, whether the charge of forgery was true or false; the quickness of your invention readily suggested to you other means of eluding the force of acknowledged forgeries.

On that occasion, you stood forth the advocate and apologist of forgery, as far as that attempt was practicable. In the picture you drew of the evidence in the Douglas cause, you contrived indeed to keep the forgeries out of view as much as possible, instead of making them, what they ought to have been, capital figures. They could not be altogether omitted, but they were touched very lightly, and treated by you in the most gentle delicate manner that can be imagined.

Left, however, the very mention of forgery should have made an impression on the minds of the noble Lords who were present, you chose to soften the epithet, and, instead of the true and simple appellation of *forgeries*, you generally gave them the more gentle one of *supposed letters*. At  
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Stewart and Lady Jane Douglas. In these cases, the persons resorting to forgery and falsehood were actually under trial for their lives or properties ; From peculiar circumstances, the pressing necessity of speedily producing some proofs for their own protection, presented to their view a very disagreeable and fatal alternative ; and as they were unfortunately so situated, that their case did not admit of variety of proofs, they had no other obvious means of saving themselves, but by making use of false or forged evidence.

In what respect is there any similitude between this and the situation of Sir John Stewart and Lady Jane Douglas ? The capital facts contested in the Douglas cause admitted of such a variety of conclusive and satisfactory evidence, some particulars of which have been already mentioned, that the total absence of the proofs which were naturally to have been expected, has been always deemed by judicious men one of the many strong and convincing arguments against the reality of Lady Jane's delivery. In another respect, the case of Sir John Stewart and Lady Jane Douglas differed materially from the cases mentioned by your Lordship, for they were never confined to any precise time for producing their proofs of the suspected delivery ; The period of several years, subsequent to the date of that delivery, was at their command for this purpose ; They had indeed the strongest incitements to obtain at an early period satisfactory proofs, and carefully to preserve them ; because the mortifying reports against the truth of the delivery, and so highly prejudicial to their honour and interest, were early and often communicated to them ; but as no criminal action or process of any sort had been raised against them at the time of their inventing the forged proofs, they are left without excuse in resorting to that criminal expedient ;

dient ; the delay of a few days would have been sufficient to bring from France authentic and convincing evidence, if the suspected fact was founded in truth ; and as that delay could have been attended with no prejudice to them, it is not easy, in their case, to figure any possible motive for their having recourse to forgery, but the impossibility of producing genuine proofs of an ideal fact.

Thus, it is evident, that the cases of innocent forgeries, so carefully collected by your Lordship, and so kindly produced in vindication of the forgeries in the Douglas cause, contained, when duly examined, no circumstances applicable to the situation of the persons whom your Lordship upon this occasion was pleased to take under your protection.

But, my Lord, how happens it that you did not apply the same reasoning, and become equally the apologist of forgery in the Anglesea case ? From the nature of the fact there in question, and the death of the witnesses to Lord Anglesea's private marriage in 1741, there was certainly much more room for your applying the doctrine in exculpation of forgery, than in the Douglas cause.

When Lord Anglesea thought proper to have the marriage ceremony publickly performed or repeated in October 1752, Nixon Donovan, and Charles Kavanagh, the only witnesses to the private marriage in 1741, were dead, consequently, if it had been neglected to get a certificate from these witnesses in due time, there were no means now of supplying it, but by forgery ; if ever therefore a case existed, where forgery was excusable from the plea of necessity, which I deny ever did exist, this was the case where that plea could have been made use of with the best grace.

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There was also in this case, much juster ground for exculpating Lord and Lady Anglesea; for no part of the forged certificate was written by either of them, nor any proof of its having been contrived or executed by their orders, though found in the custody of Lady Anglesea.

It has been remarked as a singularity, in the part your Lordship took in the Anglesea cause, that you omitted altogether, in supporting that case, to avail yourself of the strong arguments that might have been drawn from the precedent in the Douglas cause, established by your own doctrine.—It is to me no mystery, why you avoided touching on that ground—There are arguments which may sometimes pass for a day, but produced and canvassed on other occasions, recoil on their authors, and serve only to cover them with confusion.

The attention of the House was, in the Anglesea cause, so much fixed upon the forgery, and the noble Lords who were convinced of that fraud, felt so justly the consequences of it, that you judged it best to declare to them the established principle, that if they were convinced of the forgery, they must “disbelieve the positive parole evidence “on that side, *swear it who will.*”

Though I have stated the capital circumstances in the Anglesea cause, I by no means pretend to form any opinion of the merits on either side. The certificate supposed to be forged, and the evidence of that forgery, never fell under my observation; it would therefore be very improper, on my part, to speak from personal opinion, whether the written evidence, in behalf of Lord Anglesea was forged or not.

It is of no consequence to my argument, what side of that question prevails: I mean only to state faithfully what passed in the House of Lords in the  
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the course of the deliberations on this cause, and to shew what influence the persuasion, or even strong suspicion of forgery, has upon generous and fair minds, acting in a solemn, judicial capacity.

From what happened upon this occasion, I am entitled to presume, that, in the Douglas cause, a similar impression would have been made upon these same generous minds, if your Lordship had thought proper to state, in their full force, the various branches of evidence in that cause, to draw the attention of the noble Lords to the acknowledged forgeries as a capital part of that evidence, and to explain in a proper manner, the solid principles established for governing the judgment in matters of this nature.

If, indeed, it could be supposed that your lordship was determined to give your own voice in favour of the party in whose behalf that forgery had been employed, and if it was your earnest wish that victory should attend them, I am ready to admit, that the plan you followed was the most judicious that could have been invented.

Upon that supposition it was well judged, to retain secretly in your own breast, the solid principles established in matters of forgery, and which, in the Anglesea cause, have been acknowledged by yourself. It was also well judged to keep the forgeries out of view as much as possible, and when the mention of them could not well be avoided, to accompany them with such glosses and anecdotes about innocent forgeries, as were best calculated for preventing the baneful influence of such an ingredient in the evidence of the party you thought proper to support.

If you can be gratified by a compliment, strictly confined to your abilities, you are entitled to the satisfaction of knowing, how generally it is allowed

lowed that no Judge ever understood, half so well as your Lordship, the science of what may be called, the management of causes.—It is a praise, which that perfect model of a Judge, the great and good Lord Hardwicke, would have disdained ;—Ever attentive to the interests of justice and of truth, and ignorant of parties in questions of civil right, he made his study not only to search to the bottom, and satisfy his own mind on which side the truth lay, but in delivering his sentiments, to state in all their extent, and with all the force that was due to them, the facts and arguments of both parties.

This rule he more particularly observed in a certain Great Assembly, where causes receive their final decision. Judges, in the situation which he then enjoyed, or in that which now falls to your Lordship's share, always have been, and probably ever will be allowed, to have in that Assembly great weight in forming the decisions relative to property or private rights ; it therefore appeared to him, the more indispensably his duty, to avoid any thing that could mislead others. The ingenuity and address permitted to counsel in selecting the facts and arguments of one side, and even the arts of eloquence appeared to him improper and misplaced, if not contemptible when employed by a judge, whose business it was to resume the arguments on both sides, and dispassionately to inform the noble Lords of the genuine state of facts, without colouring, partiality, or vain display of superior talents.

It is an event deeply to be regretted, that this great judge lived not to the period of the Douglas cause ; his mind was formed to embrace the whole extent of matter in that cause, and to perceive the tendency of all the various branches of evidence.

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These he would have stated to the House with perspicuity and candour, and an opinion given by him would have afforded satisfaction to the public in general, even to the parties themselves, sensible as they must have been, that nothing had escaped his observation, that nothing was exaggerated or extenuated; and that, in a judicial capacity, he was neither liable to be misled, nor capable of misleading others.

I am sorry it is not in my power, consistently with truth, to say that the opinion delivered, and the part taken by your Lordship in the decision of that cause, have been attended with these happy consequences. I can scarcely think that your Lordship's own expectations on this head, could possibly have been very sanguine. What I have already stated with regard to one, and but one, though not an immaterial branch of the Douglas cause, might perhaps be sufficient intimation of the reasons why your opinion and your conduct in that affair have been productive of so much discontent, and have excited sentiments with regard to your Lordship's personal character so much the reverse of those produced by the judgments of Lord Hardwicke—but, my Lord, I cannot agree to let it rest here—there are other parts of your speech and of your conduct in that cause, which do no less credit to that ability by which you can make every thing bend to your own purpose, and surmount those difficulties which to men of inferior genius appear formidable. The consideration of these must be reserved for subsequent letters.

But before I take my leave of your Lordship at present, I cannot forbear touching on a topic which is intimately connected with the subject. It contains a reflection which undoubtedly occurred to your Lordship when the two causes above-mentioned came before you in the House of Peers, but



which I am not ashamed to own, nothing but fatal experience could have made sensible to me.

It may be asked how it happened, that first the suspicion alone, then the persuasion of forgery in the Anglesea cause, struck, in so lively a manner, every breast in that illustrious Assembly, while in the Douglas cause, the plain avowal both of the forgery and perjury of Sir John Stewart, (for I still insist on the latter crime,) failed of having the same influence, though supported by a prodigious number of other proofs and evidence.

I venture to assert, that the very number, and length, and complicated nature of these proofs, was the true reason.

The argument derived from forgery, when that argument stood alone, was obvious and unanswerable, was convincing and congenial to the noble and uncorrupted minds of those judges. As no eloquence could give it greater force, so no artifice could elude it: it suspended the decision in the former cause, till the matter was further enquired into, and, in the issue, it proved triumphant over many important probabilities which confessedly opposed it: but in the latter cause, the exact and laborious scrutiny made on the part of the plaintiff, necessarily suggested new proofs, which from their very nature, became complicated and involved in new circumstances and new researches; and though these proofs were all on one side, they inevitably threw on the whole an appearance of intricacy, which alarmed and terrified men not accustomed to those enquiries.

The controversy seemed not to be one cause, but a vast collection of different causes. Those parts of it which were obvious to common sense and which required no labour of thought to be comprehended, were lost and obscured in the multitude of others which demanded a more minute  
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and accurate discussion ; and the Peers, actuated by their usual integrity, but forgetting that the dispute turned merely on a question of fact, of which they were no less able judges than the most profound lawyer, were apt to consider the matter as on the same footing with the subtle questions of jurisprudence, where they justly have a great deference for those who are engaged by their profession to attain a more particular acquaintance with that science.

Your Lordship's distinguished sagacity soon led you to perceive this disposition of mind in your audience ; you took advantage of it, and availed yourself of the authority attending your station ; you mustered up all that eloquence which you so readily command on every subject where you take an interest ; and by wandering in that immense forest of facts and circumstances, you were able to draw off the attention of the Judges from those luminous points of view, which if considered singly, would have sufficed alone to determine that memorable cause.

But it shall be my business to separate the parts as much as possible in my future addresses. In the mean time, I must beg leave to say a few words with regard to the propriety of this address to your Lordship.

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The peculiarity of my situation in this affair, which in future letters will be more fully explained ; the nature and fate of the contest in which I have been engaged ; and the hardships and injuries sustained by myself, and the other guardians of the Duke of Hamilton, have been such as to render an address of this nature unavoidable.

Some men of contracted views, or timid dispositions, may perhaps object to the propriety of this measure; they will tell your Lordship, that it is contrary to public utility to doubt of the wisdom and integrity of your decisions; the false complaisance of some may go even so far as to maintain, that it is better many individuals should suffer injustice, than that the veneration attached to your Lordship's situation and office should in any degree be diminished by too nice an examination of your conduct.

I shall not attempt any answer to that part of mankind, with whom such language is the result of servile or flattering dispositions; but if there are any who, in sincerity of heart, and from public considerations, are disposed to adopt the above principle, they deserve an answer, and to them I beg leave to submit a few considerations.

While a cause is in dependence, I admit that all publications, and all the little arts of popularity, tending to raise the prejudices or to inflame the passions, are highly improper, and ought not to be permitted. But, after the decision of a cause, the freedom of enquiry into the conduct and opinions of the Judges is one of the noblest and best securities that human invention can contrive for the faithful administration of justice.

It is for this very purpose that it has been established in this country, that Judges shall give their opinions and decisions publicly;—an admirable institution, which does honour to Britain, and gives it a superiority in this respect over most of the other countries in Europe.

Laws may recommend or enforce the due administration of justice; but these laws are of little avail, when compared with the superior efficacy of the restraint which arises from the judgment of the public,

public, exercised upon the conduct and opinions of the judges.

It would be extremely fatal to the liberties of this nation, and to that inestimable blessing, the faithful distribution of justice, if this restraint upon Judges were removed, or improperly checked.

The public has a right, and ought to be satisfied with regard to the conduct, ability, and integrity of their Judges. It is from these sources alone that genuine respect and authority can be derived; and an endeavour to make these the appendages of office, independant of the personal character and conduct of the Judge, is an attempt which, in this free and enlightened country, most probably never will succeed.

This freedom of inquiry is not only essential to the interests of the community, but every Judge, conscious of intending and acting honourably, ought to promote and rejoice in the exercise of it.—It is a poor spirit indeed that can rest satisfied with authority and external regard derived from office alone. The Judge who is possessed of proper elevation of mind, will both for his own sake and that of his country, rejoice that his fellow-citizens have an opportunity of satisfying themselves with regard to his conduct; and of distinguishing Judges who deserve well of the public from those who are unworthy.—He will adopt the sentiment of the old Roman, who, conscious of no thoughts or actions unfit for public view, expressed a wish for windows in his breast, that all mankind might perceive what was passing there.

If these considerations are of any force for establishing the justness of the principle, the only objection I can foresee against this freedom of inquiry is, that it may happen sometimes to be improperly exercised.

This is an objection equally applicable to some of the greatest blessings enjoyed by mankind, whether from nature or from evil institutions.—It is no real objection to health or civil liberty, that both of them often have been, and are extremely liable to be abused.

When the freedom of inquiry now contended for happens to be improperly used, it will be found that the mischief carries along with it its own remedy. The most valuable part of mankind are soon disgusted with unmerited or indecent attacks made either upon Judges or Individuals; the person capable of such unworthy conduct loses his aim; the unjust or illiberal invective returns upon himself, to his own disgrace; and the Judge whose conduct has been misrepresented, instead of suffering in the public opinion, will acquire additional credit from the palpable injustice of the attack made upon him.

Upon this ground, my Lord, I am willing to close with you. If it can be shewn that in any thing I wilfully misrepresent you, state false facts or form false conclusions, let the reproach fall upon my head, while the advantage accrues to your Lordship, and to the cause you supported.

But if, on the other hand, it shall appear that there is the strictest attention to the truth of facts, and to the fairness of the reasoning; if I have had the strongest cause to complain of the injustice I have met with, and, when thus provoked, shall still abstain from too much severity of expression; I hope it will be allowed, that I am far from trespassing against the duty of a good citizen and subject. That very duty, as well as the duty which I owe to myself, have required from me this inquiry and address.

It is of importance to the community in general, that any flagrant act of injustice done to a private  
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man should not be suffered to escape without observation or censure. That importance is increased, when the conduct complained of affects numbers of men, and is likely to establish a precedent for future oppression or injustice.

Such is the present case; for if the Duke of Hamilton's guardians, acting from conviction, and upon the most generous, I may say, heroic principles, of duty and attachment to their trust, have met with such unjust and injurious treatment as your Lordship knows they have suffered in this cause; and if this is allowed to pass unobserved, where will there be found hereafter guardians willing to prefer the conscientious discharge of their duty to the personal and pusillanimous considerations of their own ease, interest or safety?

But what calls for the public attention in a peculiar manner, is the dangerous innovation in the laws and rules of evidence, which has in this cause been successfully attempted by your Lordship.

No man who knows any thing of the principles upon which your arguments proceeded, can possibly blame me for exciting the public attention to them. Few cases have, perhaps, ever existed, which could so well justify the propriety and utility of an address of this nature.

It is of use that this freedom of enquiry, if conducted with decency and candour, should be exercised with regard to the opinions and conduct of all Judges, whether they be such as judge in the first instance, or in the last resort. There can be no good reason for allowing it with regard to one class of Judges, and denying it as to others; on the contrary, if a distinction is to be made, it is more necessary to permit, and even to encourage that freedom of inquiry, with respect to those Judges whose determinations are subject to no other controul but that of the public opinion, than

with respect to those, whose judgments, if wrong, may be rectified by the mode of an appeal.

Let us suppose a case where the judgment given in the original court had been reversed in the court of appeal, and where that reversal, instead of proceeding from the unanimous voice and opinion of the Supreme Judges, had given rise to a dissent and protest on the part of several respectable members of the Supreme Court of Judicature; would it not be preposterous to maintain, that the public may indulge themselves as much as they please in their censure and animadversions upon the Judges who pronounced the original judgment, and upon those members of the court of appeal who happened to be of the same opinion with them, but that there ought to be no privilege of inquiry, nor any right to doubt of the rectitude or infallibility of the other members of that court of appeal who happened to be of a different opinion, and whose superiority in numbers had produced a reversal of the first judgment?

Your Lordship will soon perceive, that the case here supposed is not entirely ideal; the supposed case is but a description of what really happened in that very cause which gives rise to this address. It is well known, that the judgment pronounced in the original jurisdiction, where the merits had been maturely examined during several years dependance, was in favour of the plaintiffs. That jurisdiction is supreme in the northern part of this island, subject only to a review of their judgments by the House of Lords. When the cause came there by appeal, there was a reversal indeed of the original judgment; but your Lordship knows, that this reversal did not meet with a general approbation or concurrence, even within the walls of the august assembly where it was pronounced; on the contrary, there was not only a difference of opinion  
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but a formal protest and dissent, drawn up and signed by several respectable peers, was entered upon the journals of the House of Lords.

Such strong marks of disapprobation of judgments pronounced in private causes, have been very unusual. This right, competent to any of the noble members of that Supreme tribunal, had gone into disuse for more than half a century : The revival of it was reserved for your Lordship's times, and it will be remembered hereafter, at what period, and upon what occasion this right was asserted.

Much freedom, both in discourse and in publications was used with the judges who had given the original decision : that freedom afterwards extended itself also to those noble and respectable Peers, who, from motives of honour and conscience, had insisted to have their sentiments put upon record, and transmitted to posterity. Every liberty, and even every abuse of liberty, exercised with regard to those Judges in the Court of Session, and in the Court of Appeal, who had declared their conviction in favour of the facts and arguments produced on the part of the plaintiffs, was permitted. The Judges thus attacked, conscious of their own integrity, viewed with indifference these extravagancies proceeding from blind or illiberal zeal, and trusted, that when the fever abated, justice would be done to them in the minds of the cool and impartial part of mankind.

Shall it then be maintained, that the freedom of enquiry into the opinions and conduct of Judges, is to be permitted only with regard to the original Judges, or those of the supreme jurisdiction, who happen to be of the minority upon a question of reversal? Where is the benefit that would result to society from establishing a distinction of this sort,  
or



or from making this valuable privilege depend on such fortuitous circumstances?

Let us then conclude, that there must either be a strict prohibition to enquire concerning the rectitude, or to doubt of the infallibility of any persons in a judicial capacity, (which it has been shewn would be adverse to the genius of our happy constitution; or if permitted with regard to one class of Judges, that it must extend to all, more particularly to those who judge in the last resort; otherwise many inconsistent consequences would follow, and the freedom of enquiry, so much connected with liberty, and so fondly cherished by the inhabitants of this island, would be put on a whimsical or precarious footing, and reduced to an empty name.

And, indeed, my Lord, I am persuaded, that upon recollection of the whole of your conduct in the Douglas contest, from the first dawn to the final conclusion of it, you must have expected an address upon this subject, and that you can be at no loss to discover why that address is now made to you in particular.

If the state of my health and spirits had not prevented me, your Lordship would not so long have been detained in expectation of what was so justly due to you—Nor shall it be from an unknown hand that the payment of this debt proceeds—From the first moment of my thinking at all of this measure, I was resolved that your Lordship, when the address was made, should know with certainty from what quarter it came.—I cannot approve of anonymous addresses in matters of this sort.—Whenever a man is so circumstanced that he finds himself in honour or in duty bound to make a personal attack or personal defence, it seems to me mean-spirited and improper to abstain from

from putting his name to an attack or defence of this interesting nature.

It is not for me, nor is it my object, to arraign in general the judgment of that august assembly, which reversed the solemn judgment of the court of judicature under whose consideration the merits of this cause had for a long time depended.

Those noble Lords who assented to the opinion delivered by your Lordship upon the whole merits of the question, and who silently concurred in the judgment of reversal, acted, no doubt, from conviction, and upon the best principles : Though their reasons were not expressed in public, it must be presumed, that they had reasons which to them appeared strong and convincing.

No man can be more remote than I am from either supposing or insinuating any thing contrary to this just presumption. It is not so much the judgment itself, nor the silent concurrence or undeclared reasons for that judgment that I mean to attack, as the public and ostensible reasons, produced by your Lordship, in support of the opinion you gave for the reversal of the original sentence.

In judicial proceedings, the proper objects for the examination of the public, are the public reasons given by Judges in support of their decisions.

I have the honour to be

Your Lordship's

Most obedient and

Most humble Servant,

ANDREW STUART.

## L E T T E R II.

MY LORD,

**I**N the first Letter which I had the honour to address to your Lordship, it has been shewn, in what manner you disposed of one capital branch of the evidence in the Douglas cause, *viz.* that which arose from the indisputable forgeries of Sir John Stewart ; There will be occasion, in the course of this correspondence, to shew that all the material parts of the evidence produced in behalf of those whose interests you opposed, were unfortunately treated by your Lordship in a similiar manner ; for it will appear that they were either disregarded and kept out of view, or so coloured and explained away, as to deprive them of the powerful effects, which, in the opinion of many judicious men, who had studied the whole of the evidence, they could not have failed to produce, when properly and completely stated.

I shall not pretend to ascribe motives for this conduct ; These proofs, which made so strong impression on the minds of men accustomed to the investigation of truth, and free from any bias or partiality in this cause, may possibly have failed to produce the same effect upon your Lordship : This may either be imputed to the sufficiency of the proofs themselves, or to your Lordship's mind being too much fortified against them ;—It is a matter of too nice discussion for me to venture an opinion upon this alternative.

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My purpose at present is to give some examples of the very different reception, which every shadow of evidence, and every circumstance, hearsay or conjecture, produced on the side which you espoused, met with from your Lordship.

It is not merely with a view to the Douglas cause that these things are now to be stated ; for I shall here have occasion to lay open a train of conduct, and a mode of reasoning adopted by your Lordship of the most dangerous nature, and tending to subvert the established laws and rules of evidence,—that great bulwark of the Lives and Properties of British subjects.

The decisive importance, which in the Douglas cause, your Lordship's talents bestowed on the strange, absurd, and incredible deposition of *Pierre Menager*, surgeon, must, with all who are acquainted with the circumstances of the case, produce the same sort of reflections, as your endeavours to diminish the importance of the clear and acknowledged forgeries.

Upon the day of the final decision, you stated the testimony of Menager in such a manner, as was well calculated, I own to gain credit to it for that day at least ; and I am not surprised, that, when so stated, it should have made a strong temporary impression on such of your hearers as either had not read and considered the whole evidence in the cause, or who could not instantly bring to their recollection the great outlines of that evidence ; But as I am confident that the argument founded by your Lordship upon the depositions of this man, cannot stand the test of examination, I must therefore beg leave to discuss this matter a little more accurately than your Lordship thought proper to do on the day of the decision.

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produced ; nor are there any traces of any such letters having ever existed.

Nor is this all ; even the *house* of this *Madame Le Brun*, said to be situated in the *Fauxbourg, St. Germaine*, has never been discovered, notwithstanding the great facility at Paris, by means of the capitation and police records, as well as other aids, of discovering any house or householder in any quarter of the town, upon the slightest indications.

Neither has the existence of this *Madame Le Brun* ever been discovered, though all possible inquiry was made, and much fruitless labour bestowed, during several years, by both parties in this cause, in the searches for these material persons, Madame Le Brun and her daughter, as well as for Pier La Mar the accoucheur, specified and described by Sir John Stewart.

Your Lordship will recollect, that all these are acknowledged and admitted facts, and beyond the reach of controversy ; for in this summary, which contains but a part even of the material facts admitted in the cause, I have avoided making use of any thing that is disputed, however strongly proved.

The inference I make from these acknowledged facts, is not only that it is incredible that these things should have happened, if Lady Jane had really been delivered at Paris on the 10th of July, in the house of a Madame Le Brun, and with the assistance of a person named ; but further I am intitled to infer, that where there is such a total deficiency of the direct and positive proof, which was naturally, and even necessarily, to have been expected, from the facts alledged, if true, any indirect proof produced to supply that deficiency requires to be very strong indeed, free from ambiguity or suspicion of falsehood, and that in such  
a case

a case something stronger, than mere hearsay must be requisite.

If, in these circumstances, there should start up a man, who, without any personal knowledge of the delivery in question, pretends to recollect, that about sixteen or seventeen years before the time of giving his evidence, a story was told him by a surgeon at Paris (dead many years before the period at which the evidence was given) about the delivery of a foreign lady of twins, with circumstances resembling the delivery in question, but without the support of any written proofs, or of any precise certain fact, or chain of facts, which might confirm his testimony by evidence independent of himself, will it seriously be maintained, that a testimony of this sort ought to have the effect to supply all the amazing deficiencies above mentioned?—Upon such hearsay evidence, would your Lordship be authorised to say, that credit is due to a very uncommon fact, such as the extraordinary delivery in question, supported by forged evidence, but contradicted by a chain of admitted facts and circumstances, such as afford inferences more certain and conclusive than the hearsay or verbal testimony of a number of witnesses?

If such a doctrine can be maintained, it is obvious, that the strongest and most convincing proof that ever was, or ever will be brought, of a fraud of this nature, must be overturned, and go for nothing, whilst there can be found upon the face of the earth, a person capable of getting by heart, and retaining in his memory, two or three words essential to the party standing in need of his testimony, and capable of deposing, that these words were made use of in his hearing, by a person now dead;—An assertion, which from its nature does not admit of any refutation, and

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consequently,

consequently, from the hopes of impunity, may be obtained with the greater facility.

To bring this supposed case home to our present purpose, your Lordship must recollect, that in the story related by *Menager*, of a delivery which he pretends had been performed by *Delamarre*, surgeon at Paris, who died in the year 1753, and with whom *Menager's* conversation on this subject was several years before *Delamarre's* death, the only essential words are those of *twins*, *Rheims*, and *an aged foreign Lady*.—Strip it of these, or even of any one of these, and there is not in the whole of *Menager's* depositions any article or circumstance that can be of the smallest utility to the party he meant to support.

To what a situation must the proof in this, or any other cause of the same nature, be reduced, if, after examining hundreds of witnesses upon material facts, and after collecting great variety of written evidence, it shall be in the power of one single witness, to break in pieces the whole chain of circumstances, and all the proofs of the opposite party, merely by his committing to memory, and repeating a few words or circumstances which he pretends to have learnt from a deceased friend, or by superadding a few circumstances to a fact which had some real foundation, but which, without these circumstances, bore no similitude to the fact in question?

But what shall we say, my Lord, if the testimony thus afforded by *Menager*, instead of supporting the story solemnly and judicially told by Sir John Stewart, concerning the person employed by him to deliver his wife Lady Jane Douglas, relates to a story supposed to be told to this witness by *a different person*; one totally incompatible with the surgeon employed by Sir John Stewart for the delivery, and with whom Sir John must be

be presumed to have been well acquainted both on that occasion, and during the course of the sixteen months while he had the charge of the youngest twin.

Will it be said that this man *Menager*, who does not pretend to have ever seen Sir John Stewart, or Lady Jane Douglas, either in company with the accoucheur, or upon any other occasion, knew better than they did who it was that delivered Lady Jane, or, that a deposition which necessarily implies the falsehood of their story about the delivery, must, at the same time, be sustained as complete evidence of that delivery, and of the circumstances attending it.

That it may readily be perceived whether the observations on *Menager's* evidence are well or ill founded, it is proper that it should be stated precisely, in the words of his depositions; and for that purpose an abstract is subjoined, containing all the particulars of the account given by him about a delivery, said to have been performed by *Delamarre*, surgeon at Paris, and classing these particulars in such order, as to make more obvious the total amount of *Menager's* depositions as to that delivery. From the perusal of that abstract, with or without the depositions from which it is faithfully taken, it will perhaps appear extraordinary how your Lordship, upon such a foundation, should have been able to rear up an edifice capable of supporting itself even for one day.

The plaintiffs, perhaps from error in judgment, not only had always considered *Menager's* evidence as a contemptible part of the proof on the part of their adversaries, but had persuaded themselves, that when duly weighed, it would operate against the party whom it was meant to serve; that it would shew what desperate expedients and suppo-



sitions they were obliged to resort to, and would most strongly prove their opinion of the necessity of producing the real accoucheur, without the possibility of finding him. Upon that account, I must confess, that in the *Case* given in for the plaintiffs, to the House of Lords, less attention was given to this branch of the cause than to any other, and many things were there omitted, which might have been material, for shewing the falsehood of Menager's testimony, if it had been thought possible, either that your Lordship's penetration, upon perusal of the evidence itself, could have stood in need of any reasoning upon it, in the *Case*, or if we could have viewed the possibility of your venturing to adopt the accoucheur suggested by *Menager*, in opposition to him so unalterably established by the solemn testimony of Sir John Stewart, and confirmed by the joint acts and conduct of him and his wife Lady Jane Douglas.

These omissions in the *Case*, though they afford not any sufficient excuse for your Lordship, whose duty it was not only to examine minutely *Menager's* own evidence, but also to bring it to the test of a comparison with the other proofs and established facts in the cause, will plead my excuse, however, for examining this matter a little more accurately at present. We shall then be able to judge, how far your Lordship can be justified in representing this man's evidence as so highly material for the decision of the Douglas contest.

But before I enter on the particular discussion of this evidence, you will permit me, my Lord, to propose, in a few words, a general observation on all such means of proof. I believe your Lordship will allow, and in many cases has allowed, that hearsay evidence is, in general, of very little consequence, and ought never to be regarded, except

cept where, for want of direct and positive proof the Judge is necessitated to give a determination even upon such slight probabilities as are laid before him. For besides that a testimony of this kind is weakened by its removal from the first source, it is liable, from its very nature, to important objections, which greatly diminish its authority. Very few persons impose on themselves such strict law of veracity, that every word which drops from them in conversation can be regarded as a judicial testimony—Vanity, self-interest, love of talkativeness, a variety of motives, even the most frivolous, make people indulge themselves in fictions of this nature; and they think themselves the more secure, both as a detection is not attended with any important consequence, and as their companions never dream of lifting their story, or examining circumstances, so as to render the detection possible.

If such narratives have small authority at first hand, what weight is due to them when repeated after an interval of many years, by persons who were no ways interested in the original event? The memory of men is never so tenacious as to retain, with any tolerable exactness, circumstances which entered merely by the ear, which could at first make but a slight impression upon them, and which they never, during a very long interval, had any occasion to recollect. Every one's experience may convince him, that no conversation was ever repeated by four or five persons, even next day, without some material variations, and sometimes contradictions in the circumstances.

But if innocent error be so natural, and even unavoidable in such testimony, what must be the case, where the least suspicion of fraud or corruption, or even partiality, is allowed to enter? A person who relates a hearsay, is not obliged to enter into any particulars, to answer any questions,

to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities : he intrenches himself in the simple assertion, that he was told so, and leaves the burden entirely on his dead or absent author.

For these reasons that sort of testimony, when unsupported by other proof, is much slighted by men of sense, even in common conversation, and in the most frivolous transactions of life; and I believe your Lordship's scales were the first, in which such a feather of evidence, as that of Menager, could have outweighed such mountains of proof as were produced on the opposite side.

But to enter into particulars: the first observation which naturally presents itself, upon reading the depositions of Menager, is, that as this witness has thought proper to ascribe his information to a person who had been ten years in his grave, and as he has cautiously avoided specifying any particulars which were capable of being traced, and which might discover the truth or falsehood of his general assertions, it was a thing in itself absolutely impossible to bring any proof that the deceased *Louis Pierre Delamarre* never had in the course of his life told him any such story; consequently Menager's testimony, thus incapable of direct refutation, can receive no additional strength or credit, from the circumstance that his general assertion has not been directly disproved; and yet, in judging upon this cause, it was mentioned as a circumstance in Menager's favour, that his testimony had not been disproved, or contradicted, in essential articles.

If he had ventured to specify any particular house where this delivery had happened; to mention any living authority for it; or the names of any persons present, or in the house at the delivery, or who had knowledge of it when it happened;

pened; or the names of any persons now alive, who knew of *Delamarre's* visiting that Lady while in child-bed, or even at any other time; these, and many other particulars, which were naturally to have been expected upon the supposition that his general assertions were true, admitted of investigation, and might have led to detection.

But the assertion of a story said to have been learnt from a person dead at the time of this assertion without specifying the house where the asserted event happened, or any persons having knowledge of the facts attendant upon that delivery, or consequent to it, admits of no investigation; it was therefore well judged in this witness, to adopt the plan of avoiding particulars as much as possible, as he thereby rendered it impossible to trace him, or to prove directly, either that his deceased friend never had performed such delivery, or never had told him such a story.

It must, however, have occurred to your Lordship, that although an evidence of this sort cannot, from its nature, be directly disapproved, yet there are methods of discovering, with as much certainty as is generally attainable in human affairs, the truth or falsehood of the story related; and that these methods of investigation, when properly pursued, must yield complete conviction to the mind, on one side or the other.

The judgment must be employed in discerning the truth or falsehood of the capital assertion, by attending to the credibility and consistency of the different parts of the story, as told by the witness himself, and the veracity and character of the witness in other respects; secondly, by comparing the capital assertions with the accounts received from other witnesses, who could not be ignorant of the same facts, if true; and lastly, by bringing

the whole to the test of a comparison, with the known and admitted facts in the cause.

To pursue, at present, these three branches or modes of investigation, would carry me into too extensive a field, and might prove tedious both to your Lordship and to myself: it may the more easily be dispensed with, as so wide a range is, in this case, totally unnecessary for the purposes of conviction.

The two last of the three branches above-mentioned, will be more than sufficient for this purpose, and therefore to these I shall confine myself, though it is with some reluctance I leave behind me such inviting materials as those pointed out in the first branch, where there is an ample subject for gaining a victory, upon the ground alone of the *incredibilities* and *inconsistencies* in the capital story asserted by *Menager*, and upon the falsehoods and character of this witness, in other respects.

The materials there, are in such abundance, that, to do justice to that branch alone, would consume much time, and might perhaps damp the attention, before arriving at those proofs of *Menager's* falsehood, which are free from the possibility of cavil, and which are of such a nature, as to be palpable and convincing to every mortal, whether accustomed to the rules of evidence or not.

In prosecution of the plan now proposed, I intend, first, to compare *Menager's* story about the delivery said by him to have been performed by *Louis Pierre Delamarre*, with the accounts received on that subject from the family, relations, friends, and acquaintances of this *Delamarre*.

Secondly to shew that the circumstances of Lady Jane's delivery, and particularly those which relate to the *accoucheur*, solemnly attested by persons who had the best opportunities of information,  
and

and who where the most interested in that event, are totally incompatible with Menager's endeavours to ascribe the delivery to *Louis Pierre Delamarre*, surgeon at Paris.

Thirdly the same thing will be proved, by necessary inference from written evidence in this cause independent of the verbal testimony either of Sir John Stewart, or of Menager, but confirmed by the conduct both of Sir John Stewart, and Lady Jane Douglas, from whose joint act that written evidence proceeds.

Lastly, it will be shewn that if *Louis Pierre Delamarre* himself had been alive, and had told the same story which *Menager*, by his hearsay evidence, has at second-hand given, such testimony of Delamarre himself would have been unworthy of credit, and unavailable to support the delivery in question, in opposition to the assemblage of evidence produced in this cause, and when contradicted by the same circumstances and proofs which Menager's testimony has now to encounter with.

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## P A R T I.

*Menager's Evidence disproved by that of the Family and Friends of Delamarre.*

AGREEABLE to the above plan, the first thing now to be inquired into is, What accounts on the subject of the Delivery in question have been received from the Family, Relations, and Friends of this *Louis Pierre Delamarre*? for it must certainly be presumed, that if he had a family, relations, or friend, they could not possibly be ignorant of so great and striking an event in the life of  
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this poor surgeon, as that of his delivering Lady Jane Douglas, and at an advanced age and of two sons at a birth, one of whom is said to have been committed to his care during many months ; all of which Menager has endeavoured to ascribe to this same Delamarre.

*Louis Pierre Delamarre*, native of *Montreuil* in France, came to Paris in the year 1730 ; His first occupation there, as appears from the proof, was that of learning to shave in the shop of his uncle *James Duquenel*, barber, where he remained during a year or a year and a half ; To that, succeeded in 1734, his apprenticeship to *John Mengon*, surgeon at Paris, a witness examined in the cause : From the year 1734, till the time of his death in May 1753, *Delamarre's* constant residence was at Paris. Though he never got so far as to be received into the corporation of surgeons, yet he had some practice, as surgeon, among the lower class of people, but never at any period of his life, was he an *accoucheur* by profession ; and his master *John Mengon*, with whom he remained five years, deposes, " That *Delamarre* did not study the art of delivery " whilst he was with him—That he worked much " in venereal maladies—That though he saw and " knew the *Sieur Delamarre* till his death, and that " he related to him enough of his affairs, he never " heard him say that he had delivered any woman " of distinction, nor even that he had made any " delivery."

The marriage contract of *Delamarre*, produced in this cause, and printed in the proof, shews, that he was married in 1747, to *Elizabeth Granette*, daughter of a journeyman taylor at Paris. That contract, by a clause in it, referring to the presence of *Delamarre's* relations and friends so described, points out the relations and friends with whom he was then most connected, viz. his brother

ther *Francis Delamarre*, surgeon in Paris, *James Duquenil*, master periwig maker, his uncle on the mother's side, *Peter Beaujeu*, inhabitant of Paris, and his wife *Margaret Mongin*, described as friends of Louis Pierre Delamarre, and *Alexander Lajoye*, master cartwright in Paris, described as friend to both parties.

Of these relations and friends thus pointed out, and described in the marriage contract, all of them were examined as witnesses in the course of the Douglas contest, except Delamarre's uncle, the barber, and the common friend of both parties, the cartwright. Their examination was prevented by their death before the commencement of the proof in France.

From the time of his marriage in 1747, Delamarre lived constantly in family with his wife at Paris. This woman was alive during the course of the proof, she was examined in the French action, and both parties had occasion frequently to see her.

Further, the brothers and mother of Delamarre were alive during the course of this contest. One of these brothers *Francis* mentioned in the marriage contract 1747, as then surgeon at Paris, continued to reside there till 1750, and particularly was at Paris during the years 1748 and 1749, at the very period when Lady Jane Douglas's delivery is said to have happened, and during the 16 months while her child is supposed to have been under the care of the accoucheur. Being bred to the same profession with his brother *Louis Pierre*, they used to assist each other in that business, and lived in great intimacy, insomuch that scarcely a day past without their meeting together, in the course of the years 1748 and 1749.

Besides these persons, several surgeons of the acquaintance of Delamarre, and several of his intimate



imate friends, were examined during the course of the proof in France ; but particularly *Madame Beaujeu*, midwife at Paris, and *Mr. Beaujeu*, her husband, two of the most intimate friends that Delamarre had in the world ; they were the persons who, on the footing of that intimacy, had made his marriage in 1747, and are signing witnesses to his marriage contract ; and it appears from their depositions, that they continued in that intimacy with him till the day of his death.

All these persons concurred in the information which they gave to both parties, and in declaring or deposing, that they never heard of Delamarre's delivering Lady Jane Douglas,—Or of his delivering any foreign Lady of twins,—Or of his having had the charge of the child of any foreign Lady, during 16 months, or any other period.

If this man *Delamarre*, had actually delivered Lady Jane Douglas of her twin sons, and had the charge of one of her children during so many months, and, in consequence thereof, had been engaged in a weekly correspondence with *Milord Anglois*, father of that child, (which is a part of the history inseparably connected with the accoucheur of Lady Jane) these were such remarkable incidents in the life of this obscure mean surgeon, Delamarre, that it exceeds the bounds of human belief to imagine that in a matter which required no secrecy, Menager alone should have heard of all or any part of these things, or to imagine, that Delamarre never should have mentioned them either to his wife, to his brother, to his family, or to his friends, or that They should never have happened to have heard of these incidents, or to have seen the child thus committed to his care.

The first rate *accoucheur* would have been proud of such an article in his practice, as that of delivering

livering a foreign Lady, of Lady Jane Douglas's rank, of two sons at a birth, and in the 51st year of her age; he would have made it a subject of conversation all over Paris.

But if such a distinguishing and honourable mark of confidence had been placed in a surgeon so mean and obscure as *Delamarre*, and had been attended with such success, it must have been the boast of his life:—Not only his wife, his family, and his intimate friends would have known of it, but it would have reached as far as the circle of his acquaintance went; and by being diffused from one to another, the knowledge of this remarkable event, so much for the honour and interest of *Delamarre*, must in course have spread itself very far at Paris.

There would have been hundreds of persons alive at the time of taking the proof in this cause, who had heard of this delivery from *Delamarre* himself, or from those to whom it had been communicated by him or his friends.

Instead of this, notwithstanding all the industry of Mr. Douglas's agents, for years together, there has not been found, in the whole extent of Paris, or of France, any one person, besides Menager himself, who ever heard of *Delamarre*'s delivering Lady Jane Douglas, or any Lady from *Rheims*; or, in short, any genuine traces of his being concerned in a delivery applicable to that in question, or of his having kept a correspondence with any foreign Gentleman, or Lady, in consequence of a child's being intrusted to his care.

The total ignorance of this matter, on the part of the family, friends, and acquaintance of *Delamarre*, and the impossibility of discovering, throughout France, any person who had ever heard of *Delamarre*'s performing the delivery in question, or capable of giving genuine support to  
Menager's

Menager's evidence, must, to every unprejudiced mind, afford the strongest conviction of the improbability and falsehood of the story told by this witness.

Such, my Lord, is the result of the first branch of evidence which I proposed to submit to your recollection. On considering the proof, these facts and observations were so obvious, that, without presuming too far, I may be allowed to suppose, that they made some impression on your Lordship's mind, though not equal to what you probably must have felt in considering the still more decisive facts, which are now to be stated under the remaining branches.

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## P A R T II.

### *Menager's Evidence disproved by Sir John Stewart, &c.*

YOUR Lordship knows, that in the beginning of the contest relative to the birth of Mr. Douglas, Sir John Stewart was judicially examined by the Court of Session in Scotland, concerning the circumstances of the birth in question, and particularly in relation to the accoucheur employed by him for the delivery of his wife Lady Jane Douglas.

Every person who hears that there was an opportunity of learning these particulars from Sir John Stewart's own mouth, and who wishes to discover the truth or falsehood of Menager's evidence must, above all things, be anxious to know what account has been received from the husband of Lady Jane, in support of his own and her honour

honour, and of the rights and interests of the person he acknowledged to be his son; for although McNager, in a matter to him so indifferent, at the time of receiving his intelligence, and for many years afterwards, might easily be under some mistake in this matter; or, from some motive or other, might have given a false account; yet neither of these suppositions can take place with regard to Sir John Stewart.

As he could not be ignorant of the person by himself employed for the delivery of his wife, and to whose care one of the children, born to such expectations; was by him entrusted during so many months immediately subsequent to the delivery, so he had every motive to declare the truth with regard to the accoucheur, if Lady Jane really had been delivered by *Delamarre* of Paris, or by any other person.

He must have been sensible that nothing but a genuine state of facts could avail him, and that every deviation from the line of truth, particularly with regard to the person employed to assist at the birth, must have been most pernicious to his own honour and interest, and to the honour and interest of those most dear to him.

If any thing could add weight to these motives, it was the solemnity of the occasion upon which he was called to give evidence in this matter; an examination before the Supreme Judges of his country, upon so interesting an occasion, must have made him very attentive to abstain from any false relation of facts.

If it shall appear, that, upon this solemn occasion, he gave evidence totally exclusive of *Delamarre* of Paris; and if, notwithstanding such evidence, it is still to be supposed that *Delamarre* was the accoucheur; it must be supposed, contrary to all human experience, that Sir John Stewart, in opposi-

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sition to every consideration of honour and of interest, has suppressed a truth which would have been highly favourable to his cause; and that in room of it, he has substituted a false story, evidently and essentially to his own prejudice, with a minute detail of particulars, for none of which there ever was any foundation; and all this done in a manner that may be said to add perjury to the other guilt of such extraordinary conduct.

His examination was continued during three successive days, for several hours each day; in the intervals he had full leisure to recollect himself, and to converse with his counsel and friends, or with his confident Mrs. Hewit, then at Edinburgh, and who had been at Paris with him, at the time fixed on for the delivery. On the third day, his evidence, which had been regularly taken down in writing each day, was deliberately read over by him, and after some small corrections, made at his desire, was signed by him.

His behaviour and precision during the whole time of his examination, the accuracy of his answers so clear and applicable to the questions put to him, and the minute detail of particulars, received from him upon that occasion, convinced every person present of his ability, and how much he was in possession of all his faculties.

This examination was in December 1762. He was examined again, by the same Judges, in the summer 1763; but neither then, nor at any other time, did he give any different account of the accoucheur, than that which was contained in his first examination. He lived till the month of June 1764, and, till his last illness, was in good health and spirits. His judgment and memory he enjoyed to a remarkable degree.

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The only part of Sir John Stewart's evidence, requisite to be stated in this place, is what relates to the person employed by him for the delivery of his wife, and that shall be given in his own words. At the same time, to assist in making the comparison between the *accoucheur* described and ascertained by Sir John; and the person suggested for that office by *Menager*, some of the admitted facts of the history of *Menager's Delamarre* shall be stated occasionally.

Sir John Stewart's evidence as to the *accoucheur*, is in these words :

ARTICLE I. " *That Pier La Mar was the man-midwife : That in the year 1721, he, Sir John Stewart, passed the winter at Leige, and by means of an old acquaintance, Colonel Fontaine, he became acquainted with Pier la Marr, a Walloon, as he believes, and who then said, to the best of his remembrance, that he had been surgeon to a Walloon regiment, though that the chief branch of his business was acting as a man-midwife.*"

But the *Louis Pierre Delamarre* adopted as the *accoucheur* of Lady Jane, upon the testimony of *Menager* was a Frenchman born at *Montreuil* in France in the year 1711, and who never was at *Liege* in his life, nor was he ever surgeon to any regiment.

ARTICLE II. Sir John being interrogated about what age the man-midwife was, if he knew whether *Pier La Marr* was a married man or an unmarried person, or if he knew any person that was acquainted with him ; what was his size, colour, or complexion ? declared, " *That, in his*

“ apprehension, Pier La Mar was (in 1748) towards 60 years of age, not so tall as the declarant, of a thin make and a dark complexion, but did not know whether he was married or not; and he (Sir John Stewart) did not know any person Pier La Mar was acquainted with at Paris, though he imagines he was well known at Liege.”

In other parts of his testimony, he declares, “ That he had been very intimately acquainted with Pier La Mar at Liege, and that he relied upon the information which he had received from Colonel Fontaine, in the year 1721, concerning La Mar’s skill in his profession.”

But these things are totally inconsistent with the history of *Delamarre*, the friend of *Menager*.

He was born in 1711, consequently was but ten years old in 1721, when Sir John Stewart, who actually was at Liege in the year 1721, contracted an intimate acquaintance with the person who afterwards delivered his wife. This *Delamarre* was but 37 years old in 1748, when the accoucheur described by Sir John was aged about 60.

*Menager’s Delamarre* did not begin to study surgery till the year 1734, as appears from the deposition of his master, John Menjoin surgeon at Paris, who deposes, “ That he was acquainted at Paris; “ with a surgeon of the name of *Delamarre*, who “ entered to the deponent in quality of a student “ in surgery in the year 1734: That before he “ entered with the deponent he shaved with the “ *Sieur Duquenil*, master wig-maker, his uncle, “ at Paris, street St. Anne, who placed him with “ the deponent: That he remained with the deponent the space of five years: That the *Sieur Delamarre* had then some beginning of surgery, “ or

“ or notions taken up in a province ; but that he  
 “ had not learnt Latin, and has never learnt it  
 “ since :—That since the time he was acquainted  
 “ with the Sieur Delamarre till his death, the  
 “ said Sieur Delamarre was not surgeon-major of  
 “ any regiment, seeing he always remained at  
 “ Paris.”

ARTICLE III. Sir John declares, “ *That the*  
 “ *first time he was at Paris, as above declared on, he*  
 “ *accidentally walking in the Thuilleries, met with Pier*  
 “ *La Mar, with whom he had been very intimately*  
 “ *acquainted, as said is, at Liege ; and the decla-*  
 “ *rant's finances being in bad order, it occurred to*  
 “ *him that this was a good opportunity of being served*  
 “ *cheaper than by seeing a first rate man midwife at*  
 “ *Paris, as Pier La Mar had told him, that having*  
 “ *been called up upon an affaire epineuse he believed*  
 “ *he would continue some time at Paris ; and upon the*  
 “ *declarant's mentioning to him his intention, he an-*  
 “ *swered, that he would be glad to do him any service*  
 “ *in his power :—That Pier La Mar declined, how-*  
 “ *ever, to acquaint him where he lodged, which, in*  
 “ *his apprehension, proceeded from the reason he had*  
 “ *formerly given of his coming to Paris ; but Pier*  
 “ *La Mar told him, that at certain times he would*  
 “ *be found at the Thuilleries, or at the Luxembourg.*”

Every circumstance of this is exclusive either of the truth or application of the story told by Menager about his friend *Louis Pierre Delamarre* ; the very essence of Menager's story is, that Delamarre had been *bespoke* for the delivery, and that he (Menager) was acquainted with this circumstance before the arrival of the lady at Paris ; and even that Delamarre had told him before the lady's arrival, that it would be an advantageous affair for him : and Menager further deposes, that he had



promised to Delamarre to assist him at the delivery, and believes that it was about the month of March or April that he had made that promise.

These things of themselves destroy any connection between Lady Jane Douglas's delivery and that which is by Menager imputed to his friend Delamarre; for as Sir John and Lady Jane did not come from *Aix-la-Chapelle* to *Rheims* till June, and from *Rheims* to *Paris* till July 1748, if they ever saw or heard of Menager's Delamarre at all, it must have been after their arrival at Paris on the 4th of July 1748; and by all the evidence in the cause relative to this matter, it is clearly established, that there was no accoucheur bespoke before their arrival at Paris.

The depositions of Mrs. Hewit and Isabel Walker, if credit is to be given to them, prove that Lady Jane's moving from Rheims to Paris, at all for her delivery was a sudden thought, and immediately carried into execution.

ARTICLE IV. Sir John declares, "*That not only Pier La Mar himself frequently called ibrough the day to enquire after Lady Jane, but also sent his servant to inquire after her: That he does not remember ever to have heard from Pier La Mar how long he had been at Paris; nor did he tell him the place where he then lived, or from whence he had been called to Paris; and the declarant supposed, and took it for granted, that he came from the Walloon country, and resided at the place where he had last seen him.*"

But Louis Pierre Delamarre lived constantly at Paris from the time of his first arrival in 1730 to the time of his death, and, so far as the sphere of his business reached, had no occasion for concealment.

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Even the circumstance of *La Mar's* frequently sending messages by his servant is not applicable to Menager's Delamarre: for it is in proof, that the latter was in so low and poor a situation, that he never in his life had a servant, male or female, to assist him, even in his household affairs. Madame Beajeu, midwife at Paris, and Mr. Beajeu her husband, depose, That he (Delamarre) never had any servant belonging to him, either before or after his marriage.

The contract of marriage of this Delamarre in the year 1747, printed in the pursuers proof, contains a list of the effects and household-furniture of the married couple, and exhibits such a state of poverty and wretchedness as is almost without example, in the lowest class of surgeons in any country. His account-book was also produced in evidence, in which, during the course of several years, there appear only three deliveries performed by him, for the first of which he received 10s. 6d. for the second 6s. 3d. and for the third 17s.

Such was the mean and wretched situation of Louis Pierre Delamarre, the friend of Menager, and such the man whom your Lordship has supposed to have been bespoke and selected by Sir John Stewart for the accoucheur of Lady Jane, in preference to all the good assistance which Paris afforded.

ARTICLE V. In the course of Sir John Stewart's judicial examination in December 1762, he was asked by the court, What were the last accounts he had of Pier La Mar, or if he knew or suspected where he was? His answer was in these words: "*That he thinks, though he is not positive, that the last accounts he had was by a letter from himself at Naples, delivered by Mons. Du Bois to the declarant, then in London, in the year*

“ 1751 or 1752 ; nor does he know or suspect where  
 “ he now is, only he thinks it is probable he may be at  
 “ *Liege, where he first saw him.*”

In conformity with this part of the history of the accoucheur, one of the forged letters found in Lady Jane Douglas's cabinet at her death in 1753, signed Pier La Mar, dated in the year 1752 from Paris, and addressed to Sir John Stewart, mentions, that he (La Mar) since Sir John's departure from France in 1749, had made the tour of *Italy*, and a stay of ten months at *Naples*, which had been of great service to his health, and that he was preparing to return thither, as soon as he could find a friend to accompany him in the journey.

But Menager's *Delamarre* never was at Naples, or in any part of Italy ; From the known history of this poor mean surgeon, it would be too ridiculous to suppose him making excursions of this sort, either for pleasure or for health ; It is clearly established by the proof, and the fact is not contested, that Louis Pierre Delamarre never was either at *Liege* or *Naples*, or at any place out of France, in the course of his life.

Having thus stated in Sir John Stewart's own words the precise and circumstantial account very solemnly given by him concerning the person who assisted at the delivery of his wife Lady Jane Douglas, and having compared that account with the known facts and history of Menager's *Delamarre*, let me now ask your Lordship, Whether it could be meant seriously, when, upon the faith of Menager's veracity, and of his single hearsay testimony, you exhibited to the House of Lords this *Louis Pierre Delamarre*, as the true and genuine accoucheur of Lady Jane Douglas ?

*Result*

*Result of the Comparison between Sir John's La Mar  
and Menager's Delamarre.*

There are, my Lord, some things so opposite and inconsistent, that no human art can reconcile them; and it will not be thought a bold assertion, when I venture to affirm, that it is an affront to human reason to attempt to identify two persons so very different and incompatible in every respect, as are these two persons, *Louis Pierre Delamarre*, the friend of Menager, and *Pier La Mar*, ascertained and described on different occasions by Sir John Stewart as the accoucheur of Lady Jane Douglas.

It is not possible to convince any man in his senses, that *Pier La Mar, Walloon*, whom Sir John had seen at *Liege* in the year 1721, with whom he was at that time intimately acquainted, Who before that time had been several years surgeon to a Walloon regiment, and Who, in 1721, enjoyed great reputation for his skill in midwifery; Whom Sir John Stewart met with by accident at *Paris* in 1748, aged then about 60, and whom he employed for the delivery of his wife, upon the faith of what he had formerly heard of his skill in midwifery; Who afterwards made the tour of *Italy*, and a stay of ten months at *Naples*, and was preparing in 1752 to return to that country; That this man, I say, could possibly be the same person with *Louis Pierre Delamarre*, born at *Montreuil* in France; Who, in the year 1721, was but ten years old; Who never was at *Liege* in his life; Who never was surgeon to any regiment; Who at no time enjoyed reputation for his skill in midwifery; Who, after attending a barber's shop, began to study surgery in the year 1734, and was in the year 1748 of the age of 37; Who never was at

*Naples* or in *Italy*; and, in short, Who never was out of France, but had his constant residence at Paris, from the year 1734 to the day of his death in May 1753.

I appeal to the common sense of every man of plain understanding, whether it be possible to identify the two different persons above described, or to reduce them into one and the same person.—I take it for granted that the answer will be, that it is impossible.

If so, the honour of the delivery in question cannot belong to both of these surgeons. Sir John Stewart's account of the person who performed the delivery, and Menager's, cannot both be true; they may, indeed, both be false, and necessarily must be so if there was no delivery: but as the truth or superior credit due to the one, necessarily excludes the truth or credibility of the other, the question, in the enquiry about the delivery comes to this, Whether Mr. Menager, or Sir John Stewart had the best cause of knowledge as to the person who delivered Lady Jane, and which of them deserves most to be credited on this occasion.

As to Mr. Menager's cause of knowledge, and the credit due to him, your Lordship's penetration could not fail to observe how very slight and unsubstantial the foundations are, on which his evidence is reared up, and how destitute of any genuine support.

He never saw his *Delamarre* in company with the person he delivered, or with any of her connections; he knows not the house where the delivery happened, or any person having particular knowledge of that delivery; he never saw the child left to *Delamarre's* care, nor knew in what house it was kept.

Every essential part of the facts contained in this man's evidence, ultimately rests upon his own  
veracity

veracity or memory ; there is no fixed or visible foundation for the fabrick he has raised upon a conversation of which the reality and the circumstances are equally questionable—It is *the baseless fabric of a vision*, and yet, by your Lordship, has been adopted as solid and complete legal evidence.

On the other hand, if Lady Jane Douglas really had any delivery at all, the cause of knowledge, and the opportunities which Sir John Stewart had to be well acquainted with what related to the person employed by himself for the delivery of his wife Lady Jane, and to whom he trusted his child, must be admitted to be the strongest that could exist in any case ; They are such, and so strong, that if the question were between the veracity of Sir John Stewart, and that of the person himself, who pretended to have delivered Lady Jane, instead of being a question with a hearsay evidence, that person would not be entitled to more credit in this matter, than Sir John Stewart, to whom every circumstance was as much personal, as it could be to the accoucheur, and whose cause of knowledge, in all respects, was at least equally strong.

When your Lordship therefore contends, that no credit is due to Sir John Stewart's relation of facts, and that superior credit is due to Menager's story, you must be reduced to the dilemma of maintaining one of two things ; either that Sir John Stewart, notwithstanding his complete cause of knowledge, was totally mistaken in this matter ; Or that knowing the truth, he wilfully suppressed it, and transferred the delivery to a person totally incompatible with the real one. Both these suppositions, so essential to your argument, shall now be considered.

*Proofs*

*Proofs that Sir John Stewart could not be mistaken as to the Accoucheur.*

The supposition of Sir John Stewart's forgetting or mistaking so completely the person employed and trusted by himself, in the most essential incidents of his life, his wife's delivery of children born to such expectations, and the trust given of one of these children during so long a period, is too extravagant to admit of serious argument : it may as well be supposed, that a man would be apt to forget his own existence, or that, from error in memory, he should transfer to another person all the incidents of his own life.

If Menager's story could be supposed true, or applicable to the delivery of Lady Jane Douglas, then it becomes morally certain, that Sir John Stewart's first acquaintance with Menager's Delamarre, must have been after Sir John's arrival at Paris in the month of July 1748, a few days before Lady Jane's delivery; because this Delamarre never having been out of France at any period of his life, and Sir John Stewart not having been in France, from 1722 till summer 1748, there never was an opportunity of their meeting before July 1748 : a circumstance such as this, of his employing a person whom he had never seen till within a few days of the delivery, is of such a nature as could not have been forgot, nor could he possibly have forgot his inducements to the employing of this man, on so short an acquaintance, in preference to all the eminent surgeons and midwives of Paris.

But much less can it be imagined, that besides forgetting these circumstances, he should recollect or imagine that this man, then aged 37, and whom he had never seen before, had been an old  
and

and intimate acquaintance of his at Leige, 27 years before that time; and that, besides the recollection of this capital fact, there should have sprung up in his mind an erroneous recollection of various other particulars relative to the accoucheur, and his connections with him, whereof he has given the detail so minutely and distinctly.

There is no illusion of memory or imagination, applicable to a person in his right senses, that can possibly account for Sir John Stewart's so totally forgetting the real Delamarre of Paris, and transferring to him all these minute particulars, for which there never could have been any appearance of foundation, upon the supposition that this Delamarre actually was the person who delivered Lady Jane Douglas.

I beseech your Lordship, to fix in your own mind, and to satisfy yourself, or rather, since that seems so easy a matter, to satisfy the world, at what time it was possible for Sir John Stewart's supposed illusions to commence. When he met Delamarre, for the first time of his life, at Paris, he could not imagine him to be Pier la Mar, his old and intimate acquaintance; he could not imagine a man of 37 years of age, to be a man of 60; no transaction which passed between them at Paris, could afterwards beget that idea: each moment of their intercourse must have continued the same impression with which their correspondence commenced; and it was impossible that this Delamarre could ever at that time be transmutated into a person so totally different.

While Sir John remained at Rheims, every day, every hour must have recalled, along with the image of his sickly child, the figure, the character, the situation of the person to whom that precious pledge was consigned, the object of his most tender concern. The daily, the hourly conversati-



ons with an affectionate and afflicted mother, would prevent these ideas from being effaced, were his mind supposed to be as volatile and fleeting as sand, exposed to every blast of wind or gust of passion.

Were even this supposition possible, (for I allow your Lordship to dispose of Nature in general, and of human nature in particular, as absolutely as you sometimes do of law and argument) I say, were even this supposition possible, must not the letters received every week from this man, the letters every week wrote to him, have restored a new distinctness and energy to the supposed obliterated lines, by which so interesting a personage presented itself to his imagination?

But, I make still further concessions to your Lordship (and I fear not your gaining any advantage by them) I shall allow that Sir John, during his abode at Rheims, had, in his imagination, confounded his old and intimate friend with his new acquaintance, must he not on his return to Paris, in 1749, have been extremely surprized to find a quite different person from what he expected; to find his old and intimate friend again metamorphosed, as by magic, into a person whom he had lately known, and only for a few days; a man of 62 recoiling near 25 years backward, into a more early period of life? the memory of this astonishing mistake must thenceforth have been indelible; his surprize at his own error must have been unconquerable; and it is not possible to imagine that he could ever, in any future time, have relapsed into his former illusions.

Yet, so early as the year 1752, when he thought proper to forge those letters in the name of Pier La Mar (I am sorry I must hurt your Lordship's memory by recalling these letters) he still thinks not of Delamarre, an abject surgeon, then alive,  
and

and confined by his necessities to Paris, but of his old friend Pier La Mar, who travels for his health to Naples, and who still thinks of repeating the same journey.

It was not upon one occasion only that Sir John Stewart gave the same account of the material particulars relative to the accoucheur *Pier La Mar*; It is established beyond the reach of cavil, and clearly proved by the deposition of the Honourable Mrs. Napier, and by the memorandum in writing taken at the interview between Sir John Stewart and her in the year 1756, that at that time he had given to her the same account of the person who had delivered Lady Jane, his country, and profession, and the manner of his becoming acquainted with, him *viz.* That his name was Peter La Mar; that he was a *Walloon*; that he had been *surgeon to a regiment* several years; and that *Colonel Fontaine* was the person who had made the acquaintance between them.

The interview which Mrs. Napier thus had with Sir John Stewart was at the desire of her relations Lady Schaw and others, to whom Sir John lay under the greatest obligations, for the generous and humane care they took of the present Mr. Douglas in his younger years. They were affected by the reports and suspicions which then prevailed against the truth of Lady Jane's delivery; and their anxiety to learn the truth, and to refute, in the most suitable manner, these suspicions, induced Mrs. Napier to question Sir John very precisely and properly, about the essential circumstances connected with the delivery in question; particularly, she applied to him for an account of the person who had delivered Lady Jane, in order that the information received from Sir John on these points, might afford a solid foundation

dation for an inquiry, and for obtaining proper proofs in a matter then so much doubted.

In these circumstances, every consideration of honour and of gratitude must have disposed Sir John Stewart to have given to that lady true information, and to have declared to her, that Delamarre of Paris was the person, if he really had been so. These motives must not only have prevented Sir John from disguising the truth to Mrs. Napier, but must have had a powerful effect in fixing his attention to the subject: and as, upon this occasion, he deliberately and confidently asserted to Mrs. Napier the same essential particulars with regard to the person who had delivered Lady Jane, which he afterwards gave at his judicial examination in 1762? it affords the most convincing evidence, that the precise and circumstantial account given by him on that solemn occasion, as above related, was neither a sudden thought, nor owing to mistake, or wanton folly of imagination.

I now return to the question which I at first used the freedom to propose to your Lordship. At what time do you seriously think that Sir John's astonishing illusions with regard to Delamarre could receive their commencement? Was it on their first meeting? Was it during their personal intercourse at Paris in July 1748? Was it during Sir John's abode at Rheims? Was it upon the renewal of their personal intercourse at Paris in November 1749? Was it while Sir John contrived the *forged* (or, according to your Lordship's gentle phrase, the *supposed*) letters from this strange Being, entirely composed of chimeras? Was it when he gave the narrative to the Honourable Mrs. Napier in 1756? Was it when he delivered the solemn, and judicial, and deliberate account before the supreme judicature of his country?

try ? It is wonderful surely, my Lord, that his memory should have been of so strange a texture, (no less strange than the object of it) that while he so entirely forgot the most interesting and most important realities, he should have adhered with so unrelenting and persevering an uniformity in the support of so absurd an illusion.

I have heard, my Lord, that liars are often dupes of their own fictions ; and that a man, by repeating his chimeras, may come at last seriously to believe them. But I beg of your Lordship to observe, that he must at first have had some motive to lead him into this tract of illusion. Be it vanity or interest, be it folly or knavery, he must have had some object in view, some game which led him from the direct road, and bewildered him in the trackless and undefinable path of error.

*Proofs against the supposition of Sir John's wilfully  
disguising the Truth as to the Accoucheur.*

If it has been clearly established, that the accounts given by Sir John Stewart, upon repeated occasions concerning the person who delivered his wife, proceeded not from mistake or involuntary error, the only other alternative that can make way for the truth of Menager's story, is the supposition that Sir John, though well acquainted with Menager's Delamarre, and conscious that the Delivery had been performed by him, had wilfully concealed his knowledge of that person, and falsely transferred it to another person, totally incompatible with him——It requires but little reflection to discover the insufficiency and absurdity of this supposition ; for it must be obvious at first sight, that Sir John Stewart could have no reason or motive for telling a *false story* about the person who assisted at the birth, and for concealing that

Louis

Louis Pierre Delamarre of Paris was the man, if he really had been so;—On the contrary, his honour and his interest required him to announce it to all the world.

One possible case only can be imagined, wherein honour and interest might operate towards a concealment of his knowledge of Louis Pierre Delamarre, if he ever had any connections with that person; and that case proceeds upon the supposition that there had been no real Delivery, and that this Delamarre had been assisting to Sir John Stewart in procuring the children, or in taking care of them for some little time.

This supposition, equally fatal to the pretensions of the party whom you espoused, your Lordship will probably not chuse to lay hold of; It is certainly, however, allowable to make such a supposition, if it be maintained, that Sir John Stewart and Lady Jane Douglas were well acquainted with Delamarre of Paris, but intentionally concealed that acquaintance, and falsely transferred the delivery to another person;—It is the only supposition that can account for a conduct otherwise totally inexplicable.

Here, by the by, let me repeat the former observation concerning the irregularity and dangerous tendency of admitting and giving great efficacy to hearsay evidence in matters of this sort.

As we all know that there have been instances in the world of pretended deliveries, and of supposititious children, there can be no offence in supposing, for argument's sake, that Lady Jane Douglas had no delivery, but that her husband had somehow or other contracted acquaintance with this Delamarre of Paris, had received his assistance in supplying him with children, and further had engaged him that he was to lend his

his name, and to play the part of the imaginary accoucheur, in case of future questions; meant while that he was to give it out that he had delivered a foreign lady of twins.

There is nothing in this case impossible, or that may not easily be supposed; and if a hearsay from this Delamarre, or any person engaged in a fraudulent contrivance of this kind, is to be sustained as equivalent to the testimony of the person himself, the necessary consequence of it is, that the grossest frauds may, with the greatest facility, be established beyond the reach of detection; for the hearsay evidence will even be attended with remarkable advantages in favour of the guilty persons, especially after the death of the supposed original author; It cannot, from its nature, be disproved; The hearsay witness is not liable to confrontation, nor obliged to specify persons or places, which may afford the means of investigation; All that is incumbent on him, as we remarked before, is to say, that such a story was told him by a deceased friend; and where the stake is great, there will seldom be wanting convenient witnesses of this sort, who in some cases, may even swear with veracity to the purposes of the impostors; in others they may improve upon the original story told them, so as to create a resemblance to that in question;—Whereas, on the other hand, the original person concerned, who lends his name, and acts such a part as is here for a moment assigned to Delamarre, would not find it so easy to escape; He would be obliged to undergo a strict examination; to specify times, places, and persons; and to give such a complete relation of facts, as might lead to investigation: If his evidence could stand this test, then credit would be due to it; if not, it would be rejected as false, and at the

same time it would become the means of detecting the fraud which it was meant to support.

It is upon this principle, that the direct evidence of a person concerning facts personal to him, is by law and practice so much preferred to any hearsay relation of these facts at second-hand.

But, my Lord, the president you have established in the case of Menager's hearsay evidence, is destructive of this salutary doctrine; You have given to that evidence the force of complete legal testimony; You have given one of the parties stronger advantages from it, than they could have derived from the testimony of his author Delamarre himself; and you have concluded against the other party, upon evidence which, from its nature, it was impossible for them to disprove, even admitting that either the accounts given by Delamarre to Menager, or his relation of these accounts, were certainly false.—You have established a precedent which may be attended with the most dreadful and pernicious consequences in matters of the greatest importance dependent on Evidence.

But to return to the subject: Nothing can be more evident than this, That in every case but that abovementioned, Sir John Stewart and Lady Jane Douglas, instead of having motives to conceal their knowledge of Delamarre, if he had been the real person who assisted at the delivery, must have had every possible inducement to make it known to their friends, and to the world in general.

They had occasion to know, even before leaving France in the year 1749, that the truth of Lady Jane's delivery was suspected in Britain: Of this they were acquainted amongst others, by a letter from Lord Mark Ker, Lady Jane's uncle, in which he conveys notice of the suspicions entertained

entertained on this head by her Brother the Duke of Douglas, and of the Duke's describing the twins as pretenders to his family.

Upon the return of the husband and wife to Britain and till the time of Lady Jane's death, they had the mortification to find that a general suspicion prevailed against the truth of her delivery; a suspicion which, whether well or ill founded, and whether proceeding from friends or Enemies, it highly concerned their honour and their interest to remove.

The necessary consequence of their being informed of such suspicions, must have been to excite in them an early and continued attention to every thing essentially connected with the delivery, and with the proof of that event, which from this early dawn they had reason to apprehend, might one day or other become the subject of legal discussion; Or, at least, they had reason to be convinced, that their honour and their interest might make it necessary and proper for them, not only to declare who the person was that had delivered Lady Jane, and to give to their friends every facility of conversing with him, but to preserve some evidence of the fact, and an accurate recollection of persons, places, and dates, essentially connected with this extraordinary and suspected event.

Sir John Stewart, and Lady Jane Douglas, both of them remarkable for their abilities and knowledge of the world, had too much penetration not to foresee, that an event so unexpected as that of Lady Jane's delivery of two sons at a birth, in the first year of her age, and in a foreign country, removed from the observation of her Friends or enemies, would produce much speculation in Britain, and probably not meet with



complete credit from the world until men were better informed of particulars.

The natural conduct, therefore, even from the beginning, must have been to diffuse, as much as possible amongst their friends and acquaintance abroad, the knowledge of such particulars of this amazing fortunate event, as might establish the truth of it on a solid foundation.

If *Delamarre*, who had his constant residence at Paris, had been the person who really delivered Lady Jane, would they not have declared this to their friends and to all the world? Would they not have desired their friends and acquaintance at Paris (for many such they had there at the very time, as appears from the proof) to meet with this man, and to receive from him just information, that upon his authority, confirmed also by their seeing the child under his care, they might declare and propagate the true state of facts.

Not only so my Lord, but They would certainly have obtained from that person, some genuine evidence in writing of the delivery performed by him, as well as some writing on the part of the witnesses; for as both were mortal, they must naturally have foreseen the importance of this precaution, in the event at least of the death of such material witnesses; and it appears from the proof, that this measure was strongly recommended to them by their friends and well-wishers.

Such certificate they might have obtained with great ease at any period of the sixteen months they remained at Rheims; Or if neglected during that time they would not have omitted to obtain it at their last interview with *Delamarre* in November 1749, when Sir John and Lady Jane, according to the accounts given, went to Paris to take from him the child which had been left to his care; or, finally,

finally, if also neglected at that period, they could not possibly have omitted, after their return to Britain, and after the mortifications which they suffered there by means of the suspicions, to write to Paris, that Delamarre might send them such certificate, which, without expence or trouble, they could so easily have obtained in a few days.

I say, my Lord, that if you seriously attend to these particulars, you must be sensible, that, in their circumstances, the supposition of their wilfully concealing the real accoucheur, and that of their wilfully resorting to falsehoods so dangerous and prejudicial to them, while they had it in their power to obtain genuine proofs, or to disclose a truth which obviously would have been of such infinite service to them are totally preposterous and inadmissible; Your Lordship has too much discernment and knowledge of the human heart to be capable of giving credit to these suppositions, so inconsistent with every principle upon which mankind have acted from the beginning of the world to this day.—A train of conduct so much the reverse of what must naturally have taken place, if the knowledge of the truth had been favourable to them, goes far indeed to prove, that there were in this case no accoucheur and no witnesses to appeal to; but at least it must be allowed to establish clearly this proposition, That if Lady Jane really was delivered, it was not by *Delamarre*, Menager's friend, from whom it would have been so easy at all times to have obtained authentic proofs for refuting suspicions so highly prejudicial to the honour and interest of the persons suspected.

*The*

*The excuse made for not applying or referring to the  
Accoucheur for Proofs.*

Your Lordship will perhaps say, and in your speech you did attempt to insinuate something of this sort, that in Sir John and Lady Jane's situation, it would have had the appearance of doubting their own honour, to have taken any certificates or proofs; But this feeble excuse cannot avail, when it appears that Lady Jane, at the same time that she avoided applying or referring to an accoucheur at Paris, wrote earnestly from London to *Aix-la-Chapelle* in the year 1750, for proofs of her pregnancy, and thence obtained them, such as they were.

Besides, if I may be allowed the expression, it is too absurd to suppose, that any persons would be so far influenced by a false principle of honour, as to allow their character and reputation to suffer in the world, and the interest of themselves, and those whom they called their children, to be so materially affected by suspicions, while it was in their power to put an end to them at once, and to confound their enemies as well as to give pleasure to their friends, by telling the truth, and by obtaining genuine proofs from Paris; Or at least by appealing to *Delamarre*, and acquainting their friends, that this man, who had his constant residence in that city, was the person who could give full information; If they had done so, some of their zealous partizans, if they themselves had any false point of honour about it, would have saved them the trouble of the application;—They would have done all that was necessary.

But let us suppose for a moment, that a false point of honour might make them abstain from  
applying

applying in their own names for proofs of the Delivery (though it is difficult to make this supposition, after the evidence in the cause of Lady Jane's earnestly applying for proofs of her pregnancy), still no point of honour could either induce them to destroy any genuine letters they had from the person who assisted at the delivery, or to conceal who that person was;—It could not enter into the most romantic head in the world, that their honour was concerned in abstaining from telling, either to their friends or to their enemies, who was the real person, leaving it to them to make the inquiries.

If there is any man who thinks that their conduct can still be justified on this imaginary principle, I desire to ask that person, on what principle he will account for their telling a *false story* about the accoucheur, and imputing the delivery to a different man from Menager's Delamarre, if he really had been the person? And on what principle will he account for Sir John Stewart's perseverance in this false story, at different and distant periods of time? Will your Lordship go so far as to say, that a *point of honour* might influence him to tell a *false story*, in preference to the *truth*, and particularly upon a very solemn and awful occasion, at his judicial examination before the supreme judges of his country, when excited by every principle of honour and of conscience to declare the truth?—Some other excuse than Honour must be found out for such degrading and unnatural conduct,

After what has been said, I may be allowed to take it for granted, that a few simple propositions are established, which, by men of cool and impartial judgments, will not now be controverted.

One is, That the accoucheur, so particularly fixed on and described by Sir John Stewart, is totally

tally different from the person suggested by Menager ; and that, as no human art can perform impossibilities, or reconcile contradictions, so it is impossible to reduce these two into one and the same person.

Secondly, That Sir John Stewart's cause of knowledge was much stronger than that of Menager, with regard to the person employed by himself to assist at the delivery of his wife.

Thirdly, That Sir John, with so good cause of knowledge, could not be in any mistake about this affair so personal to himself, and to which his attention at different periods had been so particularly excited ; consequently, if Delamarre of Paris was the real person in question, it is impossible to suppose, that every circumstance of the true story should have been obliterated from Sir John Stewart's memory, and that, instead of it, there should have sprung up in his mind a false story, totally different in every respect, with a train of minute circumstances, dates, places, and persons, nowise resembling the original facts.

Fourthly, That the only other alternative, to wit, that of supposing Sir John Stewart to have wilfully concealed his knowledge of Delamarre of Paris, and to have falsely substituted another person in his place, at the expence not only of his own honour and reputation, but also of his most essential interests, is equally inadmissible.

The consequence of these propositions is, That if Lady Jane Douglas was delivered at all, it certainly was not by the person to whom Menager has endeavoured to ascribe it ;—And thus the testimony of this witness, to which your Lordship was pleased to give such decisive importance in the Douglas cause, deserves to be blotted out from the proofs in that cause, where indeed it never ought to have appeared.

And

And will your Lordship be well pleased to have it transmitted to posterity ; (for the extreme celebrity of this cause, and its still more celebrated issue, will, notwithstanding the weakness of my pen, be sure to engage the attention of the world, after both of us are laid in our graves ;) I say, is your Lordship willing it should be known to posterity, that you rose in the most august assembly in Europe, and ventured to insinuate, that Sir John Stewart was in a continual and capital mistake with regard to the person whom he himself had chosen to assist at his wife's delivery ; Not only was ignorant of the most material circumstances attending him, but solemnly and judicially ascribed to him a birth, and a country, and years, and a station, and fortune, which visibly, palpably, and confessedly, did not belong to him ?—I again insist upon the alternative which I at first proposed : Chuse whether you will impute these mistakes to involuntary ignorance, or to perverse and deliberate falsehood ; it is as necessary you should make the choice, as it was necessary for the purpose of giving the cause for the defendant, to identify those two persons, however irreconcilable in every circumstance with each other ; If nobody assisted at the delivery of Lady Jane Douglas, she never was delivered ; and no other claims this office but *Delamarre*, the friend of *Menager* ;—I know that I am importunate to your Lordship, and I am sorry for it ; yet I cannot forbear calling on you again to fix your choice in this alternative.

\* \* \* \* \*

## P A R T III.

*Menager's Delamarre excluded by the intrinsic Evidence of the forged Letters.*

HAVING shewn that the truth of Menager's evidence is excluded by the testimony of the Family, Relations, and Friends of Delamarre, and also by the testimony of Sir John Stewart himself, I am now to call your Lordship's attention to the effect of some written evidence in this cause, proceeding from the joint act or concert of Sir John and Lady Jane at an early period.

The proof I allude to arises, 1st, From the name or subscription annexed to the four *supposed*, or, to speak a more intelligible and more plain language, the four *forged* letters;—2dly, From the contents of these letters;—and 3dly, From the circumstance of their being at all in this cause *forged*, instead of *real* letters, from the person who assisted at the delivery.

The arguments arising from the intrinsic evidence which these letters afford to the particular exclusion of Menager's *Delamarre*, were omitted in the Case to the House of Lords, because the materials which supply these arguments having been placed before your eyes, it was imagined that your lordship would have seen at once, and have declared to the House, the impossibility of supporting Lady Jane's delivery upon Menager's plan, and upon his evidence; I must therefore now beg leave to bring under your view the intrinsic evidence of these letters, as containing proofs which are satisfactory in themselves, and which serve to confirm all the preceding proofs of the falsehood of Menager's testimony.

*The*

*The Subscriptions to the forged Letters.*

In the four letters forged by Sir John Stewart, with the participation of Lady Jane Douglas, and produced as letters from the accoucheur, the *subscriptions* are of a person who signs his name thus, *Pier la Marr*, sometimes *Peir la Marr*; This is a subscription to which Sir John Stewart never could have seen any thing analogous, or which bore the least resemblance to it, if Delamarre of Paris Menager's friend had been the accoucheur;—For it was clearly proved by the relations and friends of this man, that his name was *Delamarre*, thus written and pronounced, and that this was his constant and uniform method of subscription, without the addition of either of his baptismal names, *Louis* or *Pierre*. I have myself several of his subscriptions in my possession, delivered to me at Paris, which clearly shew this; and both parties had occasion to see his subscription at his contract of marriage, where he signs *Delamarre*, without any addition.

Your Lordship knows, or must have heard, that in France it is not the custom for persons either of high or low rank to make use of their baptismal names in their subscriptions. Indeed, one may be acquainted, and even have corresponded, many years with a Frenchman, without having ever had occasion to see or learn his baptismal name.

The subscription of *Pier la Mar*, in three separate words, differs therefore not only in the family name, for *Marr* or *La Marr* are names quite different from *Delamarre*; but the whole subscription of *Pier la Marr*, taken together, is so totally different from the subscription of Menager's friend at Paris, which was *Delamarre*, in one word, without



out any baptismal name or other addition, that it is impossible the one could ever take rise from, or be confounded with the other.

If Delamarre of Paris was the accoucheur, it necessarily follows, that both Sir John Stewart and Lady Jane Douglas must have been extremely well acquainted with his subscription, in consequence of the great number of letters received from him during the course of a sixteen months regular correspondence, and in consequence of the number of letters they must have addressed to him in that period.

If it could be supposed, that they had not attended to Delamarr's subscription, upon reading so many letters from him ; yet, by having such frequent occasion to direct to him letters in return, the direction of which would be copied from, and conformable to the name and subscription at the bottom of his own letters to them, the name and subscription of *Delamarre* must, by these repeated acts, have been so strongly impressed on their memory, that there could be no chance of their ever afterwards forgetting them.

Admitting the correspondence, and supposing all the original letters to have been lost before the year 1752, when they set about supplying their place by forged letters ; They must have made the *subscription* at least of these forged letters, either precisely the same with that which they had been so well acquainted with in the original letters, or surely so very near to it, as to bear a strong similitude ; but never could have rendered it so totally different, as to insert a baptismal name which never was in the original letters, or even to make so great a difference in the family name. The subscriptions at the bottom of these forged letters are therefore at least equivalent to an express declaration from Sir John Stewart and Lady Jane

Jane Douglas jointly, at an early period, that *Delamarre* of Paris was not the person; and they afford intrinsic proofs of their having never had any correspondence in writing with him.

*The Contents of the forged Letters.*

*Secondly*, The contents of these forged letters, particularly the last of them, *viz.* that dated in June 1752, afford strong evidence of the same sort to the exclusion of *Delamarre*.

That letter represents *Pier La Marr* as having then made the tour of *Italy*, and a stay of ten months at *Naples*, and mentions his preparing for another journey to *Italy*.

As this letter was framed by Sir John, with the participation of Lady Jane, and as it appears from the Evidence of Isabel Walker, that this letter, or one of similar contents, had been read over by Sir John to his wife at London, in presence of her and Mrs. Hewit; it proves, that the account given by Sir John in the year 1762, at his judicial examination, about this journey to *Italy* and *Naples*, was not a sudden thought, but the same account which many years before that period, had been either believed or given out by them relative to the person who assisted at the delivery.

If it be a true story, that Lady Jane's accoucheur made the tour of *Italy*, and was at *Naples*, it will be admitted, that this infallibly excludes *Delamarre* of Paris, who never in his life was out of France; and it will also be admitted, that if there now existed any real letter, or copy of a real letter, from the accoucheur, containing such circumstances, that this would serve to exclude *Delamarre*.

But, my Lord, there are solid arguments to be deduced from the contents of letters forged by persons

sons so intimately acquainted with the facts in question as Sir John and Lady Jane necessarily must have been ; for if there had been any person who was at all employed by Sir John to assist his wife in her delivery, and who had charge of their youngest child for sixteen months, there necessarily must have been much personal and written correspondence with that man, and a particular knowledge of what related to him ; Therefore, if, by some strange accident, all the original letters from this person had been lost at the time they set about framing letters to supply their place, they certainly would not insert in these copies, or forged letters, a material and marked circumstance, such as that of making the *tour of Italy*, and a stay of *ten months at Naples*, if there had been no such thing in the original letters that were lost, or if it were a circumstance which they never had learnt from any quarter, or which they knew not to be applicable to the accoucheur of Lady Jane.

The inference from this to the exclusion of Delamarre of Paris, must be obvious to your Lordship ; and you must be reduced to the dilemma of acknowledging one of two things, Either that there never existed any real letters from the accoucheur to Sir John or Lady Jane, Or, that there were such letters, but that they happened all to be lost when the supposed letters were framed.

If you adopt the first alternative, that there never were any real letters, I maintain, that this of itself is fatal to the cause you supported, because it could not have happened, if the other facts essentially connected with the delivery, and the story about the child left, during sixteen months, to the care of the accoucheur were true ; and because, while it involves Sir John and Lady Jane in the grossest forgery, it would also make manifest the perjury of Mrs. Hewit and Isabel Walker about the correspondence with the accoucheur.

If

If you chuse rather to embrace the last alternative, that letters had existed, but were all lost before the year 1752 a thing in itself almost incredible, after the intimations they had got of the suspicions about the delivery), then we must conclude, that the letters thus recently lost had contained some intimation that the person in question had made the tour of *Italy*, and a stay of some months at *Naples*, otherwise it is inconceivable that Sir John and Lady Jane, without any traces of it in the real correspondence, and without any motive, would have invented such minute and particular circumstances.

If they were to invent circumstances without any authority (which at the same time is not very consistent with the supposition of their innocence), they would have chosen such as they knew to be applicable to the real person, not such as were totally exclusive of him.

Therefore whether it be considered as a positive assertion of theirs, that the real person had made the tour of *Italy*, and a stay of some months at *Naples*, or as a circumstance copied by them from what was contained in the original letters, then recently lost, it must prove fatal to the notion of Menager's *Delamarre*; for if he had been the man with whom they were in connection and correspondence in consequence of the delivery, and of the child committed to his care, not only was it impossible that they ever could have had any authority from his letters for this supposed journey, but they must have known, that he had continued at Paris, and had his constant residence there.

*The Existence of forged, instead of real Letters.*

But to conclude this subject; The very circumstance of there being forged letters in this cause ought

ought to give your Lordship a conviction almost equal to demonstration, that *Delamarre* of Paris was not the person who assisted at the delivery.

This *Delamarre* continued to reside at Paris from his first establishment there, in 1734, to the day of his death which was not till the 15th May 1753.

It has been shewn in the plaintiff's Case to the House of Lords, that the supposed letters were forged by Sir John Stewart with the participation of Lady Jane Douglas, and that the last of them was forged in the year 1752 at latest; It was impossible indeed that these letters, found in Lady Jane's cabinet at her death, could at any rate have been forged much later than Summer 1752, as Lady Jane herself died in August 1753; and when the forged letters were produced to Sir John Stewart at his examination, he solemnly declared, that he had not seen them from a *long time before* Lady Jane's death till that day.

The evidence referred to in the plaintiff's Case clearly ascertains it, that the last of them was forged at latest in Summer 1752, before Lady Jane's visit to her brother the Duke of Douglas, at his castle of Douglas; consequently many months before the death of Louis Pierre *Delamarre*.

Is it possible then to conceive, if this man, who was then alive, and resided at Paris, had been the person that assisted at the birth, that Sir John Stewart and Lady Jane Douglas, to save themselves the trouble of writing to Paris, and getting genuine letters from him, would have deliberately set about the crime of forgery, and have exposed themselves, not only to the infamy arising from a detection of that crime, but run the risk of making the whole story of the delivery disbelieved, by transferring it to a different person, one who in every respect was inconsistent with

with Delamarre of Paris?—I say, my Lord, that when the attention to this circumstance is sufficiently excited, it exceeds the powers of Eloquence to persuade any man in his senses that these things could have happened, if Lady Jane Douglas had really been delivered by Delamarre, the friend of Menager.

If the accoucheur described and fixed upon by Sir John Stewart himself had been adopted in preference to the person suggested by Menager, there might have been some sort of excuse made (if forgery admits of any excuse) for Sir John and Lady Jane's forging letters in the year 1752 from him, because he was not a native of France; He was a man much addicted to wandering from one country to another, who had no settled abode any where; and therefore they might not know where to find him, so as to get letters from him.

But the moment that you adopt Menager's Delamarre, who had his constant and known residence at Paris, and who was alive at the very time that Sir John and Lady Jane were employed in forging letters from a person totally incompatible with him, every thing becomes inexplicable, except upon the supposition of a fictitious delivery.

There are, my Lord, some things beyond the reach even of the greatest abilities; Of this sort is the attempt to identify two persons so incompatible as the accoucheur described by Sir John Stewart and that suggested by Menager. Or the attempt to reconcile the forgery of the letters, and the conduct of Sir John and Lady Jane, with the possibility of that Lady's having been delivered by Delamarre of Paris, Menager's friend.

There must be an end of reasoning in judicial matters, unless we suppose the persons, whose guilt or innocence is the subject of enquiry, to be formed like the rest of the human race, and to be actu-

ated in essential matters by such principles and motives of action as govern the conduct of the world in general.

The inferences arising from an uniform continued train of conduct, I hold to be a species of evidence far superior to the assertions or verbal testimony of witnesses ;—It is the substantial evidence of things and actions themselves, not the fallible testimony of men.

The conduct of Sir John Stewart and Lady Jane Douglas, in abstaining from ever mentioning *Delamarre* of Paris, or obtaining genuine letters or certificates from him ; The arguments founded on the intrinsic evidence of the forged letters themselves ; And their conduct in fabricating false letters, at the very time when *Delamarre* was alive, and had his fixed residence at Paris, afford solid ground on which to found arguments that no power of eloquence can destroy, no artifice or chicanery can elude.

What credit then can be due to the single testimony of Menager, in opposition to Evidence so powerful, and so firmly established ?

\* \* \* \* \*

#### P A R T IV.

*That the Credit given to Menager's hearsay Evidence would not have been due to the Evidence of Delamarre himself.*

LET us now consider, my Lord, what credit would have been due to *Louis Pierre Delamarre* himself, if he had been examined in this cause, and had given, at first-hand, the same sort of evidence which Menager at second-hand has attempted.

This,

This, it must be allowed, would be a much stronger case in favour of the cause you supported, than the real one which now exists; and yet I hope to shew, that the credit you gave to the hearsay evidence of Menager would not have been due even to the testimony of the person from whom he pretends to have derived his information.

Let it be supposed, that in the course of the searches for an accoucheur of the name of *La Marr*, and of the noise made at Paris about this great Douglas cause, *Louis Pierre Delemarre* had stepped forth, and deposed, that, about fifteen or seventeen years ago, he had delivered a foreign lady of twins, last from *Rheims*, and that one of the children was committed to his care; Or, if your Lordship pleases to make it stronger still, let us suppose him to have deposed, that he had delivered a British Lady of these twins, or Lady Jane Douglas by name.

At the same time, to make the case similar to that which now exists, it must be supposed, that the wife, brothers, relations, and acquaintance of this Delemarre, had, in opposition to his testimony, concurred in declaring or deposing, that They, though in strong and continued habits of intimacy with him, never had heard of his performing any such delivery, or of his having the care of the child of any foreigner committed to him.

It must also be supposed, that there remained, in opposition to the testimony of this man, that which now subsists against Menager's, viz. the solemn evidence of Sir John Stewart, necessarily implying not only that this *Delemarre* was not the person, but naming the particular person who had delivered his wife; with a detail of his history, and the reasons of his employing him; and in concurrence with this, the evidence of Lady Jane Douglas, proved by necessary inference from her conduct,

G 2 and



and her participation in the forged letters; Further, there must be taken into the account all the arguments to the exclusion of *Delamarre* arising from these letters, forged at the very period when he was living at Paris, and had his fixed abode there.

In short, there must be put into the one scale all these circumstances, and all the other evidence in the cause tending to the same conclusion, or tending to prove, that in this case there had been no real delivery; Into the other scale there must be put the positive assertion or deposition of this *Delamarre*, but unsupported by any written evidence, or established fact, independent of his own testimony, in the same manner that Menager's testimony now appears.

The case, as here put, is stated as favourably as can be desired, so as to bear any resemblance to the import of Menager's evidence, with the circumstances attending it; and, I will now venture to assert, that the testimony of *Delamarre* himself, so unsupported, and in opposition to such a weight of evidence against the truth of his assertion, would deserve to be rejected as a false testimony, and unworthy of credit.

Every person accustomed to the investigation of truth, and to the canvassing of evidence, would soon have perceived, that the plain solution of this matter was, that this man *Delamarre*, from one motive or other, had told a lie; for it comes to this simple proposition,—Whether it is more probable that this one man should have told a falsehood; Or that such a number of persons, who have deposed to facts either contradictory to, or exclusive of the truth of his assertion, should all of them have concurred in such deliberate perjury, and in a matter too where the natural bias of their minds, and the real interest of several of them, must naturally have led them to concur in supporting his testimony?

To

To reduce the question of probability to a narrower compass, it may even be put upon this issue alone; Whether it is more probable, that this witness *Delamarre* should have told a falsehood in ascribing to himself the delivery of Lady Jane Douglas, Or that the husband who employed the accoucheur, and whose cause of knowledge was as good in every respect, should with the concurrence of his wife, have resolved to suppress this fact, which they both had every motive to declare, if *Delamarre* had actually been the person who had delivered Lady Jane?—I say, my Lord, whether, in the case put, would it be more difficult to believe that *Delamarre* had told a lie; Or to believe that Sir John Stewart had not only solemnly and repeatedly been guilty of falsehood, by ascribing the delivery to another person, totally different from this *Delamarre*; but also that both he and Lady Jane should have been so insensible to their own honour and interest, as to have abstained from ever mentioning *Delamarre* as the person, or procuring proofs from him, in whose power it was to have rendered them such essential service; and finally, that they should have resorted to forged evidence, ascribing the delivery to another person, while this man *Delamarre* was still alive.

Is there a man at all accustomed to weigh evidence, who would hesitate to pronounce on which side the probability lay, or to decide that such a testimony has here been supposed, proceeding from *Delamarre* himself, in opposition to the declarations and conduct of Sir John Stewart and Lady Jane Douglas, (without calling in the aid of the other parts of the cause,) would deserve to be rejected as a false invented tale?

In maintaining the opinion which I have now ventured to give, I tread on ground where your Lordship will find it difficult to engage with me;

I am

I am supported not only by the reason of the thing, and by what must obviously occur to every one accustomed to canvass evidence ; but further I am supported by a late decision of the House of Lords in the case of Anglesea, where your Lordship was present, and took no inconsiderable share in the debate.

The particulars in the Anglesea case, and the comparison of them with the circumstances in that of Douglas, have been pretty fully stated in my first Letter to your Lordship ; it was there shewn, that the legitimacy of the son of Lord Anglesea depended on the truth of the fact maintained on the part of the claimant, *viz.* That Lord and Lady Anglesea, his father and mother, had been privately married in the year 1741.

Besides other proofs in favour of this fact, there was produced a certificate drawn up and signed by Laurence Neal the clergyman, expressly declaring that he had married them on the 15th September, 1741.—Not only so, but when Lord Anglesea thought proper to have a public ceremony of marriage with the same lady in the year 1752, and which was at that time expressly declared to be only a repetition of the ceremony formerly performed in 1741, the same clergyman Laurence Neal was the person who performed the office, and he at that time declared to a numerous company then assembled, that he had formerly married the same persons in the year 1741, and that he had drawn up and signed a certificate thereof, which certificate was produced to the company then assembled ; This fact, and the declaration of the public ceremony being only a repetition of that former marriage, are ascertained by a paper signed by nine persons of credit present with Laurence Neal at this public ceremony in 1752.

Your Lordship knows, that in the Anglesea cause this assertion of Laurence Neal the clergyman,

man, ascertained by such a number of persons present, and the evidence he gave under his hand of his having performed the marriage ceremony in 1741, were totally disregarded;—The other evidence in the cause prevailed over it;—In that case, the clergyman stood in the same degree of importance, with regard to the *contested marriage*, as in the Douglas cause the accoucheur did, with regard to the *delivery*; yet the evidence proceeding from this Mr. Neal, of so much seeming importance in the Anglesea cause, was found to be of no avail. The judgment declaring the son of Lord Anglesea illegitimate, necessarily implies an opinion, that no credit was due to the assertions and certificate of the clergyman, though relating to facts personal to himself.

If then the fact of the marriage of Lord Anglesea in 1741, a fact which contained in itself nothing extraordinary or improbable, could not be supported by the positive declarations of Laurence Neal the clergyman, in presence of such a number of respectable witnesses, and by the certificate drawn up and signed by him, relative to a fact which was personal to himself, and which was supported and confirmed by the concurring testimony and conduct of Lord Anglesea to the day of his death, and by the Countess of Anglesea's deposition in conformity to it, I am warranted to maintain, That the very extraordinary and improbable fact, of Lady Jane Douglas's Delivery of two sons at a birth in the 51st year of her age, could not have been supported by the positive assertion or testimony of Louis Pierre Delamarre himself, contradicted by the solemn testimony of Sir John Stewart, and by the transactions, assertions, and conduct, both of Sir John Stewart and Lady Jane Douglas, from the date of the delivery down to the period of their deaths; contradicted also by the evidence of the nearest

nearest relations and most intimate friends of this Delamarre; and finally contradicted and excluded by every one of the various branches of evidence in the cause, tending, either directly or indirectly, to the same conclusion.

If this be admitted, What excuse will it be possible for your Lordship's most zealous adherents to invent (for your dignity, or the hurry of business, may perhaps palliate, though not excuse, your own silence), I say, what excuse will your numerous Dependents invent, when it is announced to the world, that, without one grain of evidence from Delamarre himself, either written or verbal, the only thing you had to put into the scale, against such a weight of evidence on the part of the plaintiffs, was the testimony of a single witness, and that a hearsay testimony, relating to a conversation said to have happened about fifteen or sixteen years before the examination of this witness;—A conversation which he was at liberty to dress up in the manner he thought proper, without any hazard of contradiction from his supposed author, who had then been about ten years in his grave.

The solid reasons against admitting hearsay, as in any degree equivalent to original evidence, and the dangerous consequences of that practice, have been already mentioned; and now it has been shewn, that the authority which you have given to this hearsay evidence of Menager, *with all its imperfections on its head*, is much stronger than what would have been due to the positive testimony of Delamarre himself, if alive.—Need I say more, to demonstrate the pernicious and alarming innovation which you have introduced into the Rules of Evidence, and to rouse the attention of this country to your Lordship's conduct in your judicial capacity.

ABSTRACT

ABSTRACT of MENAGER's Evidence referred  
to in the preceding Letter, page 51.

THE evidence of this witness, takes in the years 1764 and 1765, with regard to some conversations said to have passed between him and Louis Pierre Delamarre, sixteen or seventeen years before that period, in relation to a delivery said to have been performed by Delamarre, consists chiefly of some general circumstances, and may be reduced to the following heads:—The antecedent notice given to Delamarre before the Lady's arrival at Paris:—The immediate circumstances of the Delivery:—The description or account of the Lady:—The time of the Delivery:—The house where it happened:—The circumstances subsequent or relative to the Delivery.

*The antecedent Notice.*

Mr. Menager deposes, “ That he remembers that Def. proof. Mr. Pierre Delamarre, surgeon at Paris, told the de- P. 526, E. ponent, likewise to Mr. Giles, surgeon, and, as he believes, to Mr. Mellet, likewise surgeon, that he had been acquainted before-hand of a stranger Lady, who was coming to Paris to lie in; and that this delivery might be very advantageous to him the said Pierre Delamarre, and that he would be very glad that the deponent himself assisted at this delivery which might be dangerous on account of the Lady's advanced age.

Interrogated

Purf. proof. Interrogated for the pursuers, deposes, " That Mr.  
—p. 529, B. Delamarre told the deponent, before the Lady's arrival  
at Paris, that he was bespoke for this in-lying, and that  
he expected her, but does not recollect for how long  
time before Mr. Delamarre spoke to him, as above:  
That he does not remember that Mr. Delamarre men-  
tioned if it was by letters or otherwise that he was ac-  
quainted of this in-lying, but only that he told him be-  
fore the Lady's arrival, that it would be an advanta-  
geous affair for him."

At his second examination, after mentioning that he  
had promised to Delamarre to be present at the delivery;  
Purf. proof. he deposes, " That he does not precisely remember the  
p. 962. G. time at which he made this promise to Delamarre, but  
believes it was about the month of March or April,  
though he cannot exactly say.

" That Monf. Delamarre spoke of this delivery se-  
—p. 965, H. veral times in the *Chambre de Garde* (of the *Hotel Dieu* :)  
That he does not remember if Monf. *Giles* and Monf.  
*Mellet*, were present more than once when Monf. Dela-  
marre spoke of this delivery."

" That when Monf. La Marre spoke of the said de-  
—p. 966, C. livery in the *Chambre de Garde*, in presence of the de-  
ponent, Monf. *Giles*, and, as the deponent believes, of  
Monf. *Mellet*, he spoke of it as a delivery *which was to*  
*happen*."

### *The Circumstances of the Delivery.*

Deposes, " That he was not present at the delivery,  
Def. proof. but that Mr. Delamarre afterwards told him that the  
p. 526, F. Lady was delivered of two male twins, and that he  
(La Marre) had been man-midwife."

Upon

Upon the cross examination, deposes, " That it was Def. proof. the day of or the day after the delivery that Mr. Dela- P. 529, D. marre told the deponent, that the Lady was brought to bed : That he was very angry that the deponent was not present at it, that he had sent to seek him :—That happily the work had been attended with all possible success, although the Lady was advanced in years, and that it was her first delivery. Does not remember that Mr. Delamarre told him how long the Lady remained at Paris after her lying-in."

" That Mr. Delamarre told the deponent, in speak- P. 561, D. ing of the delivery, that it had been more successful than he had expected, considering the age of the Lady ; from which the deponent judged, that the delivery had not been severe : That Mr. La Marre told this to the deponent the day after the delivery, when they met, the deponent does not know where ; and that he did not tell the deponent if the delivery happened in the day-time, or in the night."

" That he does not remember if La Marre told him, —P. 561, D. that he had obtained the permission of the Lady, or of her husband, that the deponent should assist at the delivery."

" That the deponent did not ask of Pierre La Marre the quarter, nor the house, nor the street where that Lady dwelt at Paris, and that the deponent never knew it."

" That he did not ask Mons. La Marre, if the delivery should be kept secret, and La Marre did not announce it to him as a secret delivery." —P. 562, D.

" That when La Marre begg'd the deponent to be present at the same delivery, the deponent consented to be there ; but that the deponent was not there, because he was elsewhere in some place, of which he does not remember "

That



“ That when Mr. La Marre sent to seek the deponent the day of the delivery, he sent to the deponent’s house, but he was not at home.”

In the next sentence, he says, “ That he believes that La Marre came himself, but that not having found the deponent, he did not leave any intimation in writing to acquaint him.”

Purs. proof. In a little after he deposes, “ That it was the deponent’s father who told the deponent that La Marre had come, and his father is now dead.”  
p. 961, F.

“ That the deponent’s said father did not tell the deponent the place to which La Marre had begged him to come, because he knew the deponent’s repugnance to these kinds of operations.

*Description or Account of the Lady.*

Def. proof. “ That Mr. Delamarre spoke to him of this affair,  
p. 527, A. as being somewhat extraordinary on account of the advanced age of the person :—That he did not tell him from what country the Lady came, but only that she came from afar, and from beyond sea, and last from *Rheims* :—That Mr. Delemarre spoke of this Lady  
—p. 528, A. whom he had delivered as a Lady of great family, without mentioning the name; and that he had expected great advantage from it.”

—p. 529, E. Upon the cross examination, deposes, “ That from the manner in which Delamarre spoke, the Lady was about forty-eight years old, though he did not tell him her age precisely :—That when Mr. Delamarre told  
Purs. proof. him, that the aforesaid Lady was from beyond the sea, he did not ask him of what country she was, and that he did not know :—That he did not ask or know, and  
p. 962, B. that

hat Mr. Delamarre did not tell him if the Lady's husband was with her at Paris, but only that she was a married woman."

*The Time of the Delivery.*

" That it may be about sixteen or seventeen years Def. proof. since this delivery happened, the deponent not remem- p. 526, F. bering precisely:—That he thinks he recollects it was—p. 527, A. towards the end of the Spring, or in the months of June or July, so far as he can remember."

At his second examination, upon a question put to him Purf. proof. on the part of the defendant, he deposed, " That the p. 529, D. delivery of the Lady from beyond the sea in question happened after the deponent's return from the army, which was, as he has already said, in the year 1747; that otherwise he would not have had knowledge of it; that is to say, if the delivery had happened while the deponent was at the army, Mr. Delamarre could not have spoke to him of it in the time.

*The House where the Delivery happened.*

" That Mr. Delamarre did not tell the deponent pre- Def. proof. cisely in what place, or in whose house, the Lady was p. 527, B. delivered, because he was piqued on account of the deponent's not being present at the delivery; but that the said Mr. Delamarre had several lying-in houses (depots) where he brought women to bed: That he had some place of this kind near the *Hotel Dieu*, in the quarter of *St. André des Arts*, and in the quarter of *St. Honoré*; and the deponent suspects this delivery may have happened in the quarter of *St. André des Arts*, because he saw Mr. Delamarre

Delamarre sundry times turn to that side in taking the street *de l'Eperon*, which leads into the street *de Paon*."

Def. proof. Upon the cross examination, he deposed, " That Mr. Delamarre did not tell him in whose house the Lady was brought to bed, but believes only, as he has said already, that it was in the quarter of St. André des Arts "

At the same examination, he deposed, " That when he met Mr. Delamarre coming from St. Andre des Arts street into the street *de l'Eperon*, the said Mr. Delamarre never told the deponent that he was going to Madam le Brun's, especially as he never mentioned to the deponent where the said Madame le Brun lived."

*Circumstances subsequent or relative to the Delivery.*

" That Mr. Delamarre told him, that one of the children of that stranger Lady had been entrusted to his care; That he put the child out to nurse in the neighbourhood of Paris, towards Belville or Menilmortan, and that he expected it would turn out greatly to his advantage. Adds, That the said Mr. Delamarre had the care of several other children, and paid those who kept them; but he spoke to him more particularly of the said stranger Lady's child:—That he told him, that one of the twins was delicate, and probably it was the one who remained at Paris, and was entrusted to his care."

Upon the cross examination he deposed, " That he has frequently taken a walk along with Mr. Delamarre towards Menilmortan, but Mr. Delamarre did not mention to him, that the child entrusted to his care, and spoke of above. or any other child, was at nurse in that district."

In the continuation of the same cross examination, he <sup>Def. proof.</sup> depofes, “ That he does not recollect that Mr. Dela- <sup>p. 529, E.</sup> marre told him, that fecrecy had been recommended with refpect to this delivery, and with refpect to the place where the child had been put.”

“ That he does not remember that Mr. Delamarre—F. told him for how many months he paid the nurfe’s fee, nor at what time the child was taken away, nor to whom he gave it; but, remembers only, that Mr. Delamarre told him, that he had no longer his penfioner, and that he always expected great advantages from it.”

“ That Mr. Delamarre never told him, that he had—p. 532, B. wrote to the father and mother about this child, and that they never entered together into fuch details.”

“ That Mr. Delamarre never told him, upon whose—p. 531, E. recommendation he had been employed in this delivery.”

At his fecond examination, when called upon by the <sup>Purf. proof.</sup> plaintiffs, he depofes, “ That he does not know of any <sup>p. 963, G.</sup> woman of condition who was delivered by Pierre La Marre, except the Lady from one of the provinces, and the Lady from beyond fea, of whom the deponent fpoke in his former depofition: That the deponent never heard Monsieur La Marre fpeak of his having delivered any foreign Lady, except the faid Lady from beyond fea.”

# [ 111 ]

The first of these is the fact that the  
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## L E T T E R   I I I .

MY LORD,

**I**F the Letters which I have had the honour to address to your Lordship shall happen to fall into the hands of persons accustomed to the investigation of facts, and willing to take the trouble of reading the full discussion that has been given of Menager's testimony, they will probably be surprised to find me at so much pains to combat such a mere shadow of Evidence; There can be little merit, I own, in gaining a victory, where the conquest is so easy; but I have this apology to offer, that it was upon this man's testimony, such as it is, that your Lordship, in the decision of one of the most important causes that has at any time appeared, chiefly founded your opinion, and contended for the reversal of the solemn judgment of the Court of Session.

Nor is this the only apology I have to offer; for the encomiums bestowed on *Menager's* Evidence, and the arguments used in favour of his credibility, were so intermixed with injurious conjectures and insinuations, and sometimes direct assertions, greatly to my prejudice, that it became necessary for me, in the first place, to expose to view, the untenable ground your Lordship had occupied, in defence of which this sacrifice of me was attempted.

If the facts were not so recent, and so well known, any insinuation that your Lordship had paid regard to such a testimony as that of Menager, and still

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more,

more, any insinuation that you had made it outweigh all the other evidence in the cause, and that it was upon this foundation you had raised the unmerited accusations against me, might be considered as malicious misrepresentation; But I am confident, that, after due attention to what I have already stated, and am now about to mention, many who were present at this memorable decision, and even your Lordship, will do me the justice to acknowledge, that I impute not to you any assertions or arguments but such as really fell from your lips;—They made too strong an impression on my memory ever to be obliterated; and if I had stood in need of any aid in the recollection of what so deeply concerned me, the frequent opportunities I have had of talking over this matter with many of my friends, who gave particular attention to your reasoning, would have afforded me that assistance; I have had the assistance also of some notes that were taken of your speech;—for notes there were taken, notwithstanding the well-judged anxiety which your Lordship, at the meeting of the House on the morning of the decision, expressed for preventing any notes being taken that day in this cause.

Having considered the intrinsic merits of Menager's testimony, and brought it to the test of a comparison with some of the capital and indisputable parts of the evidence in the cause, I must now beg leave to consider a little, what may be called the artificial aids, to which your Lordship had recourse for supporting the testimony of this witness.

You represented his evidence, as deriving great strength and credibility from his own assertion, that he had told his story in the same manner to me and others from the beginning; You said, that this assertion, though made in my presence, was uncontradicted, and hence concluded it must be true;

true; You went so far as to deliver it as your opinion to the noble Lords, that it was competent for me, though a party in the cause, and the conductor of it, to have produced myself in evidence against Menegar, for proving that he had told a different story in the beginning; and that as I had not done so, it must be presumed that I assented to the truth of what he had said; and from these premises you deduced several ingenious arguments in support of his testimony, and to the prejudice of the party whose interest you opposed.

To these assertions, and to the whole of the argument on this point, there were so many obvious and satisfactory answers, that it is difficult for me to persuade myself that all of them had escaped your Lordship's observation.

One general answer, which takes in the whole of this matter, must be an obvious one, *viz.* That if it appears, as I think it necessarily must, from the evidence of Sir John Stewart, and from the whole state of facts and arguments contained in the papers for the plaintiffs, that Lady Jane Douglas never was delivered by *Delamarre*, the friend of Menager, it became quite immaterial, whether *Menager* had told his story in the same manner from the beginning or not: so that admitting it to have been *competent*, it was *unnecessary* for me to appear in evidence, in order to contradict this man's assertion with regard to his uniformity; nor could there be any occasion for consuming time in leading a proof, to shew that, in his extrajudicial conversations, he had from time to time varied in his narration.

Upon this plain and decisive answer, I should have been inclined to rest this matter as conclusive against the whole of the fallacious arguments made use of on this head, were it not that your Lordship, while you seemed to triumph in the ingenuity of



these arguments, thought proper to mix with them some things, which, however civilly expressed, bore, in my opinion, a direct imputation on my character and conduct ;—I cannot permit any thing of this nature to escape, without giving it the answer it merits ; and shall therefore beg leave to examine your reasoning as shortly as possible ; I do it with the more pleasure, as it will tend to throw some light upon your Lordship's conduct, as well as mine, in this cause.

Let us first consider, what additional credibility is due to a witness, from the circumstance of his deposing at his examination, that he had uniformly told his story in the same manner extrajudicially.

When the veracity of a witness is suspected and the question is put to him, Whether, upon other occasions preceding his examination, he had told his story in the same manner ? is it to be expected, that such a witness will give any other than an affirmative answer to such a question ? Whether the witness be conscious of the truth or falshood of the story to which he deposes, his behaviour in such a situation will be precisely the same ; for supposing him to be conscious that he is deposing falsely, the person capable of acting this part can have no scruple to add one other falshood to it, by saying that he had, upon former occasions, uniformly told his story in the same manner ; There are even additional motives for this falshood, since it would be furnishing the means of an impeachment of his own testimony, were he to acknowledge, that upon former occasions he had told a different or inconsistent story ; and any witness who could hesitate in giving this additional confirmation of his evidence would have had much more hesitation to bring himself to the resolution of giving the false testimony itself.

Hence

Hence it is evident, that an assertion which is as naturally and necessarily the result of a false testimony as of a true one, can never with justice be appealed to, as a proof either for or against the truth of the suspected evidence.

In this situation Menager exactly found himself at the time of his examination; He perceived that he must either acknowledge, that now or formerly he had departed from the truth, and so furnish proofs of his own falshood to defeat the very purpose of his testimony, or he must boldly assert, that he had uniformly told the very same story from the beginning;—Between these two alternatives there was no option;—Was it then a fair argument, my Lord, to insinuate, that the evidence of this witness derived great additional strength and credibility from his own assertion, that he had told the story in the same manner to me and others from the beginning? It is a thing indeed so very preposterous to prove the veracity of a witness by his own testimony in favour of that veracity, that it is amazing how your Lordship should have been able to dress up this matter in the specious manner so successfully employed by you on the day of the decision.

As this argument, taken by itself, could not long have stood the test of examination, it must be owned, that your Lordship connected it with another circumstance, on which you laid considerable weight, viz. That this assertion of Menager's was made by him in my presence at his examination, and had not been contradicted by me.

If your Lordship meant that Menager's *deposition* did not contain any contradiction on my part, it is certainly true; and for this plain reason, That it was impossible it should: The deposition of a witness can contain nothing but what proceeds from that witness himself; and it might have occurred to  
your

your Lordship, that however much I might be surprised at the effrontery of the man, when he maintained in my presence a fact which I knew to be false, his deposition could not contain upon the face of it, either any marks of my amazement, or any contradiction on my part to his assertion.

But I can appeal to several gentlemen of character who were present, some of whom are known to your Lordship, I might even appeal to the agents then present for the other party, whether my amazement at the impudence and falsehood of this witness was not visible, and strongly marked? and whether at that very instant, as well as at other times afterwards, I did not acquaint them of my opinion of this witness, and of his having formerly told me a very different story.

In the course of this cause, I have often had reason to regret, that from the peculiar circumstances attending it, the proof was taken upon commission, instead of the witnesses being examined in presence of the judges who were to decide upon the evidence; for by the experience I have now had in the examination of witnesses, I cannot help being of opinion, that the veracity or falsehood of a witness is to be judged of by his manner and appearance, as much as by the words which proceed from his mouth. There never could have been a stronger instance of the truth of this observation, than in the case of Menager; for, in great sincerity I assure your Lordship, and there are several respectable persons, some of them your Lordship's acquaintance, who will vouch for the truth of my assertion, that if this witness had been examined in presence of the judges who were to decide upon his evidence, his behaviour at the time of his examinations in France was such, as, with every judge of discernment and impartiality, would have totally destroyed any reliance upon what he said; The truth

truth is, he is a strange absurd fellow, much addicted to rodomontade, and who, from confusion of head, as well as want of attachment to truth, and from a strong desire of mixing himself in matters of importance, is as apt to tell a false story as a true one at any time, without taking other motives into the account; and I can appeal to the gentlemen present, concerning the strange exhibition made by this absurd man at his examination, and whether it did not give the idea of a mountebank doctor addressing a popular audience, rather than of a man under any proper impression of the solemnity of an oath, or at all anxious about the truth of what he gave in evidence?

But your Lordship was pleased to say, that it was *competent* for me to have produced myself in evidence against Menager, for disproving what he had asserted; and you even went so far as to say, that I ought to have done so;—Both these propositions I beg leave to contest.

In this great cause, I was myself one of the plaintiffs, as guardian of the infant Duke of Hamilton; and besides this, your Lordship knows that I was the chief conductor of it from beginning to end, both in Britain and abroad. Now, it is an established rule, according to the law and practice in Scotland, which regulated the proceedings in this matter, that a person standing in that situation, though he is at all times liable to be examined at the instance of the opposite party, cannot be produced as an evidence in support of his own suit, or on behalf of the party whose interests are directed and conducted by himself.

The reasons of this wise regulation are abundantly obvious; but a contrary position I should sooner have expected from any quarter than from your Lordship; for it must be remembered that at an early period, while the preliminary appeal was in dependance,

dependance, in the year 1764, your Lordship thought proper to *hang out terrors* to the guardians of the Duke of Hamilton, for their instituting this suit.—Before the proof was taken, and before there was any opportunity of your knowing the nature of the Duke of Hamilton's interest in this matter, you ventured to give an opinion in the House of Lords upon what was not then before you, that the Duke of Hamilton had no interest in the question of Mr. Douglas's birth, and you were pleased to intimate to his guardians, that they would be answerable for the consequences to their pupil, and for any damages that might be found due, in the event that the attack upon Mr. Douglas's birth was found to be injurious;—Your words were, "*That it would be a matter to settle between the Duke of Hamilton and his guardians, when he came of age.*"

I do not admit either the fact or the doctrine which was thus *prematurely*, and, I may be allowed to say, *improperly* advanced by your Lordship; but whether true or not, your own averment ought peculiarly to have barred your Lordship from maintaining, that one of these guardians could be a witness in this cause; for whatever questions there may be, as to the nature of the interest which a guardian has in his pupil's cause, here was a solid personal and pecuniary interest established by your Lordship, which would undoubtedly of itself have been sufficient to exclude the guardian from giving testimony in what you made his own cause.

But your Lordship knows, or might have known, that it is a point perfectly understood and established in Scotland, not only that no person can offer himself as a voluntary, or what they call an *ultra-neous* witness, but that a person standing in the situation I did, of guardian, manager, and agent in the cause, is barred from giving evidence, unless called

called upon by the opposite party : Even the situation of agent alone is attended with this consequence : And this was so well understood by the parties in the course of taking the proof, that whenever any attempt was made by the one party to produce an agent as a witness, it was regularly opposed and objected to by the other : That objection stands even prefixed to Menager's examination, upon information received, that he had in some respects acted as agent for the other party, and the method of eluding the objection was by a denial of the fact.

Besides many great authorities in Scotland which I could produce, and with which your Lordship is well acquainted, on the subject of the incompetency of such evidence, I have one authority of a very respectable person in England, who was well skilled in the laws and customs of Scotland, and who enjoyed in both countries that high estimation which he merited, for his Knowledge, Truth, Honour, and Delicacy ; I mean the late Mr. Yorke.

This gentleman, who was perfectly well acquainted with all the circumstances of the Douglas cause, and who was greatly surprised and hurt by the fate of it, took occasion to write to me a letter soon after the decision, a compleat copy of which shall be sent to your Lordship, to shew how different his sentiments were from those which you delivered in the House of Lords ; at present it is sufficient to transcribe that paragraph of his letter which relates to what your Lordship had asserted of the *Competency* of my appearing as evidence for contradicting Menager ; It is in these words : “ You  
“ could not have given evidence, consistently with  
“ the rules of the law of Scotland, by which the  
“ execution of the commission was regulated : If  
“ you

“ you could, some circumstances, which appear to me of little weight, would have been explained.”

Mr. Yorke had always been of opinion, that Menager's evidence, and every thing relating to it, was a contemptible part of the proof. By the above extract from his letter, your Lordship will perceive some traces of this, and particularly that he knew it not to be competent for me to give evidence in this cause.—It would have been strange if Mr. Yorke, after so much experience of causes from Scotland, had been unacquainted with what was so firmly established by the law and practice of that country.

But, my Lord, if it had been *competent*, there were reasons against such a measure, which alone were sufficient to have restrained me ;—The indelicacy and impropriety of my appearing as a voluntary evidence, and in support of a cause, with respect to which I stood in such particular circumstances would have been with me decisive against such a step.

In this cause there were many incidents, where, if propriety could have permitted my appearing as evidence in behalf of the plaintiffs, my testimony in relating the true state of facts must have been of real use to them, not only in shewing the falsehood of Menager, but in many other particulars relative to the conduct of the cause abroad. The incompetency of my evidence excluded all idea of offering it ; but if it had been competent, an obvious reflection must have occurred to me, that, from the peculiarity of my situation in this cause, my character was unfortunately too much at stake, even without my attempting voluntarily to intrude myself as a witness, whether in support of evidence produced on the part of the plaintiffs, or in contradiction to that produced by the opposite party ;—The situation of guardian to the Duke of Hamilton,

ton, and that of conductor and agent of the cause, had rendered me sufficiently the object of the malice and obloquy of the contending party, without my assuming the part of witness also in this cause: it was easy to foresee the commentaries that would have attended so indelicate a step on my part; and it might have occurred to your Lordship, that I could not with decency expect credit, where I had become so much a party concerned; and therefore that I should better shew my sense of honour by keeping silence, unless where I could speak with some degree of weight and credit.

These reasons would have been of themselves sufficient to prevent me from making any attempt towards giving evidence in this cause, and they are such as ought to have restrained me, even if I had not been barred by the laws and customs of that country where the cause was to be tried in the first instance; and indeed, my Lord, the reasons are irrefragable; for had I been capable of any of the enormities which the other party, to serve their own purposes, endeavoured to impute to me, I might have been equally liable to the suspicion of stretching an oath to serve a particular purpose.

Though I never could think of the illegal attempt of becoming a volunteer in evidence, or of appearing as a witness on behalf of the plaintiffs, I was ready at all times to undergo an examination, and to answer every question that could be put to me by the opposite party. To them it was competent to call upon me in evidence. They knew they had a right to require my testimony; and their true reason for not calling upon me to confirm Menager's assertion, or to give an account of what passed in the first interviews with him, was, that they knew from what I had declared all over Paris, and particularly to some of their own agents, at the time of Menager's examination, that this witness  
had



had given a false testimony, and most remarkably false, in the assertion of his having told me the same story from the beginning.

But, my Lord, though, for the reasons above-mentioned, I did not, and could not act as a voluntary evidence to contradict Menager, it was by no means a true representation of the fact, that his assertion stood *uncontradicted*; for, if your Lordship had attended to the proof, and to the papers in the cause, you must have perceived that his assertion is contradicted, not only by others, but even by himself.

Any person who will take the trouble to compare Menager's depositions in the years 1764 and 1765, will find, that, besides other inconsistencies, there is a remarkable contradiction in the account he gives of our first conversations.

In his deposition 1764, he relates all the circumstances which he conceived to be essentially connected with the delivery in question, and particularly deposes to his knowledge of a connection between *Delamarre* and a *Madame le Brun*; and after relating several particulars concerning this *Madame le Brun*, and *her daughter*, he expressly deposes, that, in the first and second interviews I had with him, "he had related to me what he hath above deposed."

As I was conscious that Menager, both in this and many other respects, had given a false account of what had passed at the first interviews between us, there were some questions put by me to him on this subject, at the time when he was called upon to answer certain interrogatories at the instance of the plaintiffs; and these questions were made so special with regard to what had really passed in the first conversation with him, that I thought there was some chance that he would not have the assurance to deny the fact.

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In particular, as he had at our first conferences positively assured me, that he knew not, nor ever had heard of a *Madame le Brun*, acquainted with *Delamarre*, one of my questions to Menager upon this cross examination was, 'Whether, in the first conversations with me, he had not expressly said so?' His answer is in these words (p. 570, pursuers' proof) "That in these conversations *the deponent* " *did not speak of Madame le Brun*, because no question was put to him with regard to Madame le Brun."

Another remarkable instance of the same sort of contradiction and falsehood occurs in a very material part of his deposition, relative to the *time* when the delivery alluded to by him should have happened.

At his examination in 1764, he specifies the time to have been then about sixteen or seventeen years since that delivery happened; and this is one of the particulars which he deposes had been related by him to me at our first conferences.

As this same witness Menager, in the conversations I had with him in the year 1762, had given me a very different account, and particularly had referred the delivery then spoke of by him to a much more early date, long prior to Lady Jane Douglas's arrival at Paris, I interrogated him at his examination in 1765, Whether, in the conversations between us in 1762, he and Mr. Giles had not told me, that it was at the *Hôtel Dieu* that they heard *Delamarre* speak of the delivery, and whether they had not then also positively said, that the delivery they spoke of had happened at least seventeen or eighteen years before the year 1762?

*Menager*, in answer to the first question, deposes, "That, in these conversations, Mr. Giles said, "that it was at the *Hôtel Dieu* that he heard *La Marr* speak of the said delivery." And in answer

swer to the second question, deposes, " That he  
 " does not remember, that in the conversations fore-  
 " said between Mr. Stuart, Monf. Giles and the  
 " deponent, the deponent or Monf. Giles said to  
 " Mr. Stuart, that it was then seventeen or eigh-  
 " teen years since the delivery which they had  
 " heard La Marr speak of. *Adds, That in these*  
 " *conversations there was no question as to the time, only*  
 " *as to the fact.*"

Thus it appears from Menager's own account that two very essential parts of the testimony which he gave in 1764, *viz.* what related to the *period* of the delivery, and all that related to *Madame le Brun*, and her connections with *Delamarre*, had neither of them been mentioned or spoke of in the conversations between him and me, which is directly in contradiction to that other assertion in his deposition, where, after specifying the *time* of the delivery performed by *Delamarre*, and after mentioning his connection with a *Madame le Brun*, &c. he deposes, That he had related the same things to me at the first interviews which I had with him.

What reliance can there be on the testimony of a man who thus solemnly deposes to facts contradictory to each other? To which of these opposite assertions, one of which must necessarily be false, does your Lordship chuse to give your faith? Your attachment to this witness will probably lead you to conclude, that if the one assertion was false, the opposite one, also deposed to by him, was certainly true: but here again your Lordship's inference would be totally erroneous; for *Menager*, as if actuated by an antipathy to truth, has avoided and disguised the truth in both of the contradictory accounts contained in his depositions.

The real fact is, that in the first conferences I had with this witness, much inquiry was made by me, as may naturally be imagined, both about per-  
 sons

sons of the name of *Le Brun*, and concerning the period of any deliveries which either he or Mr. Giles had ever heard of, as performed by their friend *La Marr*;—Both of them not only assured me, that they had no knowledge of any *Madame le Brun* in connection with *Delamarre*, or of his acquaintance, but they both also agreed, that the delivery which they had heard *Delamarre* talk of at the *Hôtel Dieu*, which is the only ground-work of *Menager's* story, was a delivery which had happened at least seventeen or eighteen years before the year 1762; in the recollection of which they were assisted by their knowledge of the time when they lived together in the same chamber at the *Hôtel Dieu*, where the conversation happened; which place both *Menager* and *Giles*, as well as *Delamarre* and Mr. *Melet*, who is referred to by *Menager* as present at the conversation, had all of them left before the year 1748.

*Menager*, in his last deposition, has ventured to affirm, that in the conversations I had with him, there was no mention or question about *Madame le Brun*, or about the *time* of the delivery inquired after. Is it possible that your Lordship could give credit to him in these particulars? The very purpose of my going to Paris was to discover these essential persons, *La Marr* the accoucheur, and *Madame le Brun*, in whose house the delivery was said to have happened; and the great object of every inquiry must have been, to discover any traces of these two persons, so material in this affair, and who, from the facts alleged, must necessarily have been well acquainted with each other; Is it then probable or credible, that when my sole purpose of meeting with *Menager* and *Giles* must have been to learn from them, whether they had any knowledge of the delivery in question, that I could possibly have omitted to inquire of them, whether they themselves

selves knew the *Madame le Brun* in whose house and in whose presence it was said to have happened, or whether they knew of any person of that name who had been connected with La Marr? Or will it be believed, that if Menager had, in the first conversations with me, pretended to any knowledge of a delivery performed by his friend Delamarre at all resembling that of Lady Jane Douglas, that I could possibly have omitted to put some questions to him relative to the *date* or *period* of that event; a circumstance so indispensibly necessary to be known, that without it every other circumstance of correspondence, supposing there had been many such, could have been of no avail?

I say, my Lord, that the intrinsic evidence which Menager's own depositions afforded of his falsehood and self-contradictions in the instances above-mentioned, selected from a number of others, were of themselves sufficient to have shewn, that there could be no reliance upon this man's evidence; but much more were they sufficient to have excluded your Lordship from laying so much weight upon the assertion, of his having told me the same things from the beginning, when you must have perceived, that he had deposed to two contradictory accounts of this fact, and that the account finally given by him was in itself totally inconsistent and incredible.

It must also have appeared to your Lordship, upon perusal of the proof, that the truth of Menager's assertions was expressly barred and excluded by the depositions of Mess. *Giles* and *Melet*, the two persons to whom Menager himself appeals, as having been present with him at the *Hôtel Dieu* when Delamarre spoke to them of the delivery. That conversation with Delamarre makes the ground-work of the depositions of all these three witnesses; and it appears by the depositions of Melet and Giles, supported by the proof, as to the  
time

time when all of them left the *Hotel Dieu*, that the delivery then mentioned had happened some years before 1748; Their depositions with regard to the *time* of the delivery confirm the account I have given, as to what passed on that subject, in my first conversation with Mess. Menager and Giles, and contradict the account given by *Menager*, who stands single and unsupported, not only in his relation of what passed at our first conference, but also in the account he gave at his examination with regard to the *time* of the delivery, the circumstance of *twins*, and that of its being the delivery of an *aged lady*, and last from *Rheims*; — *circumstances* which are not to be found in the depositions of Melet or Giles, and of which Menager himself was equally ignorant at the time of my first interviews with him, until he learnt them from myself, in the course of our conversation.

The plain matter of fact is this; Menager's story originally related precisely to the same delivery as that referred to in the depositions of Mess. *Melet* and *Giles*, which was a delivery that had either been performed or boasted of, in conversation by *Dela-marre*, among his companions at the *Hotel Dieu*, some years before 1748; and Menager's original account of this matter agreed with theirs, with respect to the period of the conversation relative to that delivery. Even with regard to the circumstances of it, his first account contained no information of any material particulars, more than what appear in the depositions of Melet and Giles. This man, Menager, however, after learning the particulars of Lady Jane Douglas's delivery, and after seeing the importance of that event thought proper to intermix with the original story, such circumstances of Lady Jane's delivery, as he judged would be sufficient to create a perfect resemblance.

It would be tedious, and unnecessarily add too much to the length of this letter, were I to give a full detail of what passed at the first interviews I had with this witness; I shall only mention one or two remarkable incidents that happened at these interviews, which, at the same time that they added to the conviction of my mind, that the delivery mentioned by him related not to Lady Jane Douglas, served also to give me a decided opinion with regard to the genius and character of this man, on whose veracity, I had soon occasion to perceive that there could be no reliance.

In the beginning of my conference with Mess. Menager and Giles, I had abstained from acquainting them with the particular circumstances of Lady Jane Douglas's delivery, wishing first to see, whether, in the course of the answers to the questions put to them, any circumstances might come from them spontaneously, that bore resemblance to the circumstances of the event in question, as by this means I should be better able to judge of the truth and certainty of their knowledge. The answers I received from both of them, when examined in this manner, convinced me that they had no knowledge of any thing relative to Lady Jane Douglas's delivery, or of any delivery performed by Delamarre resembling it; and as we remained together some time after these questions were finished, it appeared to me, that there could then be no harm in acquainting them of the declared particulars of the event which had given rise to the present inquiry. In stating the facts, I had occasion to acquaint them of the name of the lady said to have been delivered; The great family to which she belonged; The large estate to which the child of that delivery might succeed; The age of Lady Jane; Her travels from Aix-la-Chapelle to *Rheims*, and from *Rheims* to *Paris*, with the circumstance  
of

of its being a delivery of *male twins*, &c. These I told them, were the asserted circumstances of this event, and that I had come to France to discover the truth, and to make a report either for or against the reality of the delivery, according as the true state of facts should authorise me.

At the same time I had taken care not to disclose to them, whether my wishes or interest were for or against the delivery; and accordingly Menager himself has deposed, that he could not discover at these interviews, whether I was for or against the delivery in question, and that the only thing I asked of him was, that he might tell the truth. I had also abstained from any commentaries upon the answers given by Menager and Giles to my questions, receiving the answers as they gave them, without discovering whether they corresponded to the event in question or not; and it seemed to me, from the whole of Menager's behaviour at that time, that he had conceived a notion, that I rather wished the proof to come out in favour of the delivery. Of this your Lordship will judge, by what I am now to relate.

When the particulars and importance of the delivery in question had been disclosed, in the manner above mentioned, Menager's zeal to be of some use, or to have some concern in this affair, was visibly increased. The first symptom of it appeared in what related to the circumstance of *twins*. Until he had learned from me that the delivery in question was a delivery of *twins*, nothing of this kind had been mentioned or hinted at by him; but after the information received as above, his language, in the course of the same day's conversation, came to this, that, upon recollection, he believed the delivery which he had formerly mentioned as performed by Delamarre was a delivery of *twins*, though Delamarre naturally spoke to him chiefly



of the child under his care.—Still, however, Menager did not that day venture to recollect that the Lady was *aged*, or had come last from *Rheims*; for, by his answers in the preceding part of the conversation, he had barred himself from this, by declaring positively that he knew nothing about the person delivered, or from whence she came.

But the most curious and remarkable part of this man's conversation, was what passed upon my shewing him the copies of the letters from *Pier La Marr* to Sir John Stewart; which letters Menager, in his deposition, has acknowledged were shewn to him at this first interview.

I asked him, if he thought these letters resembled the stile of his friend? His answer was, that Delamarre was a remarkable bad writer and speller, and he could not say whether he might not be capable of writing letters to that purpose; but that without seeing the originals of his hand-writing, he could not judge whether these letters were his or not.

I desired him to attend to a circumstance in one of these letters, where *Pier La Marr* acquaints Sir John Stewart, that he had been ten months at *Naples*; and as Menager, in answer to a former question, had told me, that his friend never had been either at *Naples* or in *Italy*, I desired to know from him, how we should be able to account for La Marr's writing a letter of this sort to Sir John Stewart;—The answer he gave, after thinking a little, was, that his friend was very much of a *libertin*, and that he had often suffered by the *maladie venerienne*; and that as that disease in France often goes under the name of the *maladie de Naples*, from whence it came, La Marr, by the *voyage de Naples*, had probably meant to intimate to his correspondent, that he (Delamarre) had lately *passé le grand remede pour la maladie venerienne*.

This

This answer was so remarkable, made such an impression on me and on Mr. Buhot, who was also present, and shewed us so completely the disposition and character of this man, that it was impossible for us ever to forget it.

Without discovering to Menager whether his answer was satisfactory or not, I proceeded to ask him, what could be the meaning of that other paragraph in the letter, where La Marr said he intended to *return to Naples*, as soon as he found a friend to accompany him in the journey?—Here he was a little puzzled; However, at last he even found a solution for this; He said, that probably it was inserted to disguise the matter, in case his correspondent, the father of the child, had occasion to shew the letter to his wife or others, as by that means they would be more at a loss to know the real meaning of the *voyage de Naples*, which was probably meant to be understood only by his correspondent.

What effect such conversation would have had upon your Lordship, I will not pretend to say; but the effect it had upon me was certainly to convince me, that this was an absurd, strange, rattle-headed Being, desirous of mixing himself in an affair, which by that time he had learnt was of great consequence, and ready to assert or invent any thing likely to acquire him profit, or to give him an importance in this business.

We parted without my expressing to him, whether he had given satisfactory answers or not; and as, in the course of the conversation, he had learnt all the essential particulars of Lady Jane Douglas's delivery, he was qualified, in the next company where he had occasion to mention that subject, to mend his original story of a delivery performed by Delamarre, as much as he pleased, and to blend it with the circumstances he had now learnt.

learnt of the delivery in question.—This is the true solution of what is said to have happened at the Prince de Turenne's, where Menager is supposed to have mentioned some of the particulars of Lady Jane Douglas's delivery, which he had recently learnt from me.

Being made certain, by what passed at this interview, that Menager had not any knowledge of a delivery performed by Delamarre, such as could correspond with the circumstances of that of Lady Jane Douglas, I never after this meeting with him in 1762 inquired further about him; nor did I ever meet with him any where, till the day of his examination in 1764, excepting once, in Autumn 1763, when I met him at the *Hotel de Modene*, in the apartments of Sir William Maxwell; at which meeting there were present several gentlemen, some of them British, who, from the conversation which then passed, conceived the same impression of Menager's character and disposition that I had done at my first conference with him.

These gentlemen, who had no interest in the cause, will, I am persuaded, have no difficulty to allow me to mention their names, if necessary, and they shall be communicated to your Lordship, as soon as you signify any wish for information on this point; in the mean time, I may safely venture to assure your Lordship, that the falsehood and singular character of this man Menager, appeared to all the gentlemen present in the same point of view as it did to me, and was frequently afterwards the subject of our conversation.

In the interval between my meeting with Menager in 1762, and this meeting in Autumn in 1763, he had been in the hands of some persons, very zealous friends of Mr. Douglas. It further appears from Menager's own deposition, that he had the honour to be constituted body-surgeon to a certain

tain Gentleman very nearly allied to Sir John Stewart; and though he (Menager) acknowledges, that it was the Douglas cause which gave rise to this acquaintance and employment, yet he deposes, (Purf. proof, p. 967) "That they never entered "into the detail of the Douglas affairs; *their conversations* (according to the deposition of this "credible witness) *did always run upon medical "matters."*

It was proved, that this same witness had, long before his examination in 1764 been supplied with a printed memorial on the part of the defendant, which contained the whole history, on his part, in relation to the circumstances of Lady Jane's delivery. Menager, in his deposition, acknowledged that he had in his possession such memorial, which he had received from an agent for the defendant; and that he had also a printed memorial on the other side, which he had found by accident; but, to prevent any suspicion of his having received assistance upon the contents of these papers, he asserted upon oath, "That he had never read neither the one nor the other of these papers." This singular want of curiosity, considering the busy and important part which this witness had assumed to himself in his contest, appeared not extremely probable, and served only to increase the suspicion of his having taken every aid to make the circumstances of his story apply to those of Lady Jane's.

At the interview before mentioned with Menager in Autumn 1763, I was a good deal amazed, to find how much his original story was improved since our first meeting in 1762, and could not help testifying my surprise. Still, however, it fell short of what it afterwards amounted to, at the time of his examination in November 1764.

What

What had passed at my first conferences with Menager and Giles was not only mentioned to our French counsel in the cause, both by me and by Mr. Buhot, the *Inspecteur de Police*, who had been present with me, but it was a frequent subject of conversation in other quarters; There was scarcely a friend or particular acquaintance I had at Paris, who had not occasion, at one time or other, to hear me talk of it, and particularly of the curious interpretation Menager had given of the meaning of the *voyage de Naples* performed by *Pier La Marr*; The oddity of this circumstance had made such an impression on me, that it became a subject of mirth with my friends, particularly with the French counsel, and was oftner repeated than would otherwise have happened, had it been less ridiculous.

Your Lordship, taking it for granted, that Menager, in his first conversations with me, had told precisely the same story which he afterwards did on his examination, was pleased to build upon that ground additional suppositions; Your expressions conveyed to the House of Lords a very extraordinary sentiment, intimating it as your opinion that I must have suppressed and concealed, even from the French counsel, what had thus passed with Menager, otherwise, you thought, that they would have seen that the delivery had been performed by Delamarre, and could not afterwards have advised the action carried on before the parliament of Paris.—You were also pleased to suppose, that, for a similar reason, I had avoided calling upon him as a witness in that action.—Nothing could be more unjustifiable than both these suppositions.

Your Lordship must have observed, that at my first conference with Menager, there were two persons present in company, Mons. Giles and Mons. Buhot, *Inspecteur de Police*; and you must also have observed

observed, that, from Menager's own acknowledgment upon oath, no arts of seduction or improper practices were ever in any degree attempted with him, by any person on the part of the plaintiffs; The only recommendation to him from me, as he himself acknowledges, was to tell the truth; neither was there any desire or recommendation to him, or to any of the persons present, to suppress their knowledge of facts, or to keep private what passed at these interviews.

It must, therefore, have been obvious to your Lordship, that there could be no scheme on my part to conceal any information received from Menager. You will hardly think me so void of understanding, as to have imagined, that what thus passed in the company of three indifferent persons could remain a secret, especially when none of them had been desired to make a secret of it.

But if I had been capable of so absurd a scheme, the difficulty of succeeding in it was greatly increased by the presence of the *Inspecteur de Police*, who had been appointed by the Lieutenant General de *Police* to make diligent inquiry into this matter, and with a strict injunction to report to himself a faithful account of any discoveries that might be made either for or against the truth of Lady Jane Douglas's delivery;—A disobedience to this injunction, or any unfaithful report made by the officer of police, might have been fatal to him, and forfeited his office.

If, in these circumstances, Menager had given to Mr. Buhot and me any account that to us appeared amounting to a probability of Lady Jane's having been delivered by Delamarre, it might have occurred to your Lordship, that neither Mr. Buhot, in his situation with respect to the supreme Magistrate of Police, nor I with respect to the French counsel, would have ventured on so foolish  
a project

a project as to conceal it from them, because it would have forfeited all credit with both, when these things came afterwards to be discovered and there could be no chance of their not being discovered in the course of the contest. Besides, as I must have wished for the assistance of the French counsel in the cause, I could receive no effectual aid from them without informing them of all the evidence which had been discovered.

These particulars were under your Lordship's view at the time you made the suppositions so injurious to me ; I will now beg leave to add the direct evidence of the French gentlemen themselves, to whom the direction and conduct of the action in France was principally entrusted ; I mean Mess. *Outremont* and *Danjon*, two gentlemen of the highest reputation for integrity as well as abilities in the profession of the law, who would be an ornament to that profession in any country, and whose private characters would procure to them the same respect and consideration in England, as they enjoy at home.

Your Lordship will find annexed, copies of two letters received by me from them, of which the originals are in my possession, and at your command whenever you please to call for them ; From these letters you will see a complete refutation of the insinuations above-mentioned that were so improperly thrown out against me ; You will see that I had not failed to relate to those gentlemen what passed at the first interviews with Menager, and will perceive the impression which the circumstance of the *voyage de Naples*, that subject of mirth and pleasantry amongst us, had made upon them.

By the same letters you will also discover, that instead of my avoiding the examination of Menager in the French action, I had frequently proposed and pressed this measure.

For

For the truth of this, I can appeal not only to these letters, and to the evidence of several gentlemen in France, but to a very respectable British subject, who was at Paris at that time ; I mean Mr. Pulteney, who had occasion, as counsel for the Duke of Hamilton, to be present at some of the meetings with Mess. *D'Outremont* and *Danjou*, when I proposed and pressed this measure ; and Mr. Pulteney was strongly of opinion with me, that Menager ought to be examined in the French action.

My reasons for wishing Menager to be examined was, that from what passed at the first conferences with him, I had conceived a very bad opinion of the man ; I saw him to be of such a composition, that if he fell into bad hands, or met with any encouragement, he would be ready to extend his evidence any length that might be desired, and so by some false similitude endeavour to create a sort of puzzle in the cause ; I gave it therefore as my opinion to the French counsel, that we ought to ascertain the extent of his story by a judicial examination in the beginning.

Mr. *Danjou* was of the same opinion with Mr. Pulteney and me ; but Mr. *D'Outremont* (the leading counsel in the whole conduct of the cause, and to whose opinion great deference was justly due) was of a different sentiment, and gave such reasons in support of his way of thinking, that my proposal of examining Menager was laid aside. This fact, and the reasons given by Mr. *D'Outremont*, will appear to your Lordship, on the perusal of the annexed letters from Mess. *D'Outremont* and *Danjou*.



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*Fallacy in the Reasonings founded on Menager's  
Assertions*

HAVING shewn the falsehood of Menager's assertions in relation to what passed at my first interviews with him, I shall now beg leave to offer one general observation upon your Lordship's manner of arguing from the evidence of this witness; It is an observation which, by those who attended to the mode of reasoning adopted on the day of the decision, will be allowed to be a striking one, though by some strange fatality, and by the circumstance of many Noble Lords being overpowered by the fatigue of the day, and by the crowd and insufferable heat of the house, the fallaciousness of the reasoning escaped that day without animadversion:

Your argument was conducted in this manner; Without any real evidence, and upon the faith of Menager's assertion alone, your Lordship took it for granted, in the first place, that from the beginning he had given to me and others precisely the same account of this matter, which he afterwards gave upon his examination in 1764: Thence you made an inference, that the story related by him of a delivery performed by *Delamarre*, with all the circumstances of similitude to Lady Jane Douglas's contested delivery, must certainly be true in every particular; and after this rapid conclusion from false premises, you then exulted in the comparison which you made on the one hand, between the various circumstances ascribed by Menager to the delivery performed by his friend *Delamarre*, and, on the other hand, the known, or at least the asserted circumstances

circumstances of Lady Jane Douglas's delivery. All this was so managed, that those who had only a general knowledge of the cause must have imagined that the principal, if not the only question, was concerning the *application* of the circumstances of the delivery mentioned by Menager, to the circumstances asserted concerning that of Lady Jane. To this point chiefly you contrived to draw the attention of the House ; and then indeed there was a fine field open, which your Lordship did not fail to make use of.—With triumph you pressed home upon your illustrious audience, the conformity and amazing similitude between the circumstances of the delivery contained in Menager's deposition, and the circumstances of the delivery in question,—Each of them a delivery of *twins*,—These twins both *males*,—The mother an *aged lady*,—a *foreigner*,—a *person of distinction*,—and last from *Rheims*. These you stated as a real foundation on which to form a solid calculation of chances, by considering what an infinite number of chances there were, that this amazing concurrence of circumstances should not have happened, and in the same year too, to two different persons ; whence the conclusion, according to the known *rules of probability*, which must govern Judges in their opinions of events, was evident, that the delivery mentioned by Menager could be no other than the delivery of Lady Jane Douglas.

When your Lordship made use of this plausible reasoning, very well calculated indeed to make a temporary impression, and even to lead captive many of your hearers, for one day at least, could it possibly be expected, that it was to stand the test of future examination, or to escape altogether without detection ?

To destroy this chain of reasoning, it might be sufficient for me, especially after the genuine state  
I have

I have given of the fact, to put this simple question:—Why did you so easily take it for granted that Menager, in his first conversation with me, had spontaneously related to me all those remarkable circumstances of similitude which were the sole foundation of your argument? You had no manner of proof, no pretence of proof beyond his own assertion, for this capital, this decisive article; There were even many proofs before you which established the contrary position; and had I been called upon, which alone could have given me a right to speak, and which, since you thought me a competent witness, it was your duty to have done, before concluding against the plaintiffs or me upon erroneous suppositions; had I been called upon, I say, I could have produced many more proofs to the same purpose: I have now mentioned some of them, and submit them to the impartial world; and had I never mentioned them, your Lordship's rapidity (I am unwilling to make use of any harsher expression) must have been equally unpardonable; since you built your whole fabric of argument upon an hypothesis which was not proved, and which, as it was false, was incapable of proof.

But on this occasion, my Lord, I have reason to complain doubly of your conduct: Not only you took it for granted so lightly, that Menager had from the beginning told uniformly the same story, without any means of his learning (except from Delamarre) the circumstances of Lady Jane Douglas's delivery, but, after assuming this important fact, I am afraid it will be found, that your Lordship did not hold the scale of justice even; for I shall now make it appear, that the same weight was now allowed to the same arguments on the side of the plaintiffs as on the side of the defendant.

After assuming the material fact above mentioned, and after you had from thence concluded, that

*Delamarre*

*Delamarre* certainly had performed a delivery of an unknown lady, attended with all the circumstances related by Menager in his deposition, the subsequent part of your *reasoning*, for connecting that delivery with Lady Jane Douglas, was solid, and, if equally applied to the evidence on both sides, unexceptionable : It is an undoubted truth, as your Lordship justly observed, that judges, in forming their opinion of events, and in deciding upon the truth or falsehood of controverted facts, must be guided by the *rules of probability* ; and as mathematical or absolute certainty is seldom to be attained in human affairs, reason and public utility require, that judges and all mankind, in forming their opinion of the truth of facts, should be regulated by the superior number of the *probabilities* on the one side or the other, whether the amount of these probabilities be expressed in words and arguments, or by figures and numbers.

When this doctrine, in another part of the cause, was applied by the plaintiffs to the *Enlevemens* (or, in the English cant phrase, the *kidnapping*) of the children of *Mignon* and *Sanry* for ascertaining the foreign gentleman and lady by whom these children were carried off in the years 1748 and 1749 ; and when it was applied to the account in *Godefroi's* books in the month of July 1748, relative to *three persons*, for ascertaining whether that account related to Sir John Stewart, Lady Jane Douglas, and Mrs. Hewit, your Lordship was not then so willing to admit the *doctrine of probabilities* ; You there tried to avoid the effect of the argument, by laying hold of the word *chance* or *calculation of chances*, which, in that part of the cause, seemed to offend your ear ; and instead of attempting to overturn the solid foundations of the argument, your Lordship prudently evaded it by this facetious observation, “ That such arguments were better suited  
“ to

“ to certain societies in London, well known to  
 “ some of their Lordships, than to a court of judi-  
 “ cature.” This stroke of pleasantry was the  
 amount of the feeble defence made upon that occa-  
 sion, against the pressure of the accumulated proba-  
 bilities, which so loudly proclaimed the children of  
*Mignon* and *Sanry* to have been carried off by Sir  
 John Stewart and Lady Jane Douglas; and which  
 ascertained with such force of conviction, that, on  
 the 10th of July 1748, she, with her husband and  
 Mrs. Hewit, actually resided at the *Hôtel de Chaal-*  
*ons*, in the house of Mr. *Godefroi*.

I shall not imitate your Lordship's example, by  
 adopting in one part of the cause the *doctrine of pro-*  
*babilities*, and rejecting it in another; I shall readi-  
 ly agree, that if it were established by solid and cer-  
 tain evidence, that Delamarre of Paris had, in the  
 year 1748, made such a delivery as is by Menager  
 ascribed to him, of an *aged foreign lady of distinction*,  
 last from *Rheims*, who was delivered of *twins*, and  
 these both *males*; I say, my Lord, that if the truth  
 of these things were unquestionably ascertained,  
 and that the only doubt were concerning the *appli-*  
*cation* of that delivery, *viz.* whether it was the de-  
 livery of Lady Jane Douglas, or of another person,  
 in such a case, I have no difficulty to agree, that  
 Judges might with a safe conscience pronounce that  
 delivery, so proved, to be precisely the delivery of  
 lady Jane Douglas; unless there should happen to  
 be in the story of the unknown lady supposed to  
 be delivered by Delamarre, some circumstances  
 clearly *inapplicable* to Lady Jane; for, in questions  
 of this nature, one single circumstance *incapable of*  
*application* destroys the effect of any given number  
 of circumstances perfectly applicable and corres-  
 ponding.

Supposing no such bars in the way, I shall ad-  
 mit, that though in the whole of the story, even as  
 related

related by Menager, there is not, from beginning to end, any mention of Lady Jane Douglas or Sir John Stewart, or any description of the person delivered, or of those who attended her, nor any mention of their language, or the country to which she or they belonged, yet the *number of probabilities*, from the coincidence of circumstances above mentioned, connecting that delivery with Lady Jane Douglas, would, in such a case, be so far superior to any *chance*, or, if that word happens to be still offensive, to any *probability*, of that delivery's relating to a different person, that I should esteem it the duty of a Judge to form his opinion, and to pronounce judgment on the side to which the greater weight of probability inclined.

When I have made this concession in favour of your argument, it might with justice be expected, that your Lordship will be disposed to make a similar concession in what relates to the *application* of the *Enlevements* of the children of *Mignon* and *Sanry*, and the *application* of the account in *Godefroi's* household books ; for admitting it to be true that Delamarre had really and certainly performed a delivery, such as is by Menager ascribed to him, and with all the circumstances of similitude which that witness has bestowed upon it ; yet I do maintain, and will undertake to *demonstrate*, that these circumstances, do not with more certainty establish this delivery to relate to Lady Jane Douglas, than the circumstances which are indisputably proved to have attended the *Enlevements* of the children of *Mignon* and *Sanry*, do establish the fact, that these children were carried off by Sir John Stewart and Lady Jane Douglas ; Or than the account in *Godefroi's* household-book, commencing the 4th, and ending the 14th of July, 1748, with all the circumstances attending it, does establish the fact, that Lady Jane Douglas resided in *Godefroi's* house at

the very time when the delivery is said to have happened in the house of *Le Brun*.

Admitting, therefore, that Menager had spoken truth in every article, and even in the assertion of his having told me the same things at our first interview, and admitting that it were proper to give to his single hearsay-testimony as strong an effect as if it had amounted to complete and indisputable evidence, the *conclusion* upon similar grounds of probability arising from both or either of the *Enlevements*, (where the essential facts are established by a crowd of witnesses, having good cause of knowledge) and the *conclusion* arising from *Godefroi's* household and police books, (where there cannot be any contest about the facts whence that conclusion is drawn) were, separately, each of them sufficient to overbalance any inferences in favour of Lady Jane's delivery, to be drawn from the facts contained in Menager's deposition; but when jointly co-operating to the same *conclusion* of no delivery in this case, the accumulated force of such evidence, when united, was sufficient to annihilate the circumstances asserted in Menager's deposition, to the effect at least of rendering them totally incapable of any *application* to Lady Jane Douglas. This would be the result, even though there had not been such strong proofs, that the delivery said to have been performed by Delamarre had happened before the year 1748; which circumstance alone was sufficient to destroy any possible *application* of it to the delivery in question.

Would it not then have been more natural and rational, on your Lordship's part, to have doubted of the truth of Menager's story, because it was contradicted and overbalanced by all the certain and admitted facts in the cause, and by the conclusions arising from them, than to have doubted of all these facts and conclusions, because contradicted,

or

or meant to be contradicted, by the single testimony of this man, whose hearsay at best could never amount to legal evidence ?

Must it not have occurred to your Lordship that there was a simple and natural solution of the puzzle, if any did arise, from the pretended similar circumstances of a delivery mentioned in this man's deposition, *viz.* That the corresponding circumstances of his story were founded in fiction, and had been moulded upon the intelligence he had got, of the asserted circumstances of the contested delivery ?

In your speech in this very cause, you took occasion to acquaint the House, that there seldom came before you a cause of any consequence, without your perceiving instances of perjury ; Might not your Lordship then in this case, with great propriety, have submitted to consideration this plain question, Whether it is more probable, that this single witness Menager may have told a lie, or, that all the various facts and written evidence in the cause, which oppose the truth of his story, have been fabricated ; and that such numbers of respectable and disinterested witnesses, concurring with these proofs and with each other, have all of them been guilty of falsehood or perjury ?

It is, no doubt, in the nature of things, *possible* that both of these contending proofs might have been founded in truth ; that is to say, it might be true, that Lady Jane Douglas had no delivery, and at the same time true, that Menager's friend Delamarre had delivered a foreign lady of twins, and that this delivery had been attended with all the striking circumstances of similitude to the asserted circumstances of Lady Jane's story, without having in fact any relation to her ; but it must be owned, that the truth of *both* these propositions is in a very high degree *improbable* ; and therefore,



that it is infinitely more probable, that the one or the other of the above seemingly opposite propositions was *false*, than that there could have happened to exist, at the same time, a *just and true foundation* for forming both these conclusions.

If this matter presented itself to your Lordship's mind in the above natural and obvious point of view, the effect of it must have been, to incite your attention in a peculiar manner to the examination of this point, Whether the *facts* upon which the reasonings on either side proceeded, and from whence the opposite *conclusions* were drawn by the plaintiffs and by the defendant, were, in the one case, equally well established as in the other ?

In pursuing this mode of enquiry, your Lordship could not have failed to observe, that, while the *essential facts*, which stand as the basis of the plaintiff's reasonings and conclusions, are either admitted, or proved by such a concurrence of witnesses as puts them beyond all doubt or suspicion, *the facts*, on the other hand, from whence the arguments for applying Menager's story to the contested event of Lady Jane Douglas's delivery are taken, rest entirely upon the veracity and assertions of this single witness, whose relation of facts is rendered unworthy of credit, not only by his falsehoods, inconsistencies, and self-contradictions in many essential particulars, but by the strong and irreconcilable contradictions which his testimony meets with, from the evidence of Sir John Stewart himself ; from the conduct both of Sir John and Lady Jane ; from the forged letters ; from the depositions of Melet and Giles ; and from various other branches of evidence in the cause.

The true and obvious conclusion from these premises is, that, without the aid of any evidence to have been given by me for contradicting Menager's assertions, the solidity, and superior force of those  
branches

branches of evidence in the cause, by which were established propositions incompatible with the *truth* or *application* of this man's testimony, were in themselves more than sufficient to overbalance and discredit that single and inconsistent testimony.

Had I not reason then, my Lord, to expect, that instead of indulging conjectures, and attempting to support Menager at my expence, the force of truth would have induced you to communicate to your audience this just observation, That, besides the *incompetency* and *impropriety* of my offering myself as an evidence in this cause, there was this additional reason against that measure that the other certain facts, and established proofs in the cause, had rendered my testimony *superfluous* and *unnecessary*?

If such was the situation of the contending proofs independent of my testimony, what confusion must your Lordship feel on the recollection of these things? And if, notwithstanding the greatness of your talents, you was yourself deceived, what compunction must you not feel, upon viewing the picture of unclouded truth, which I have now set before you, and upon perusing the simple relation of the facts, which shew the rise and progress of those fictitious circumstances, which have given birth to so much fallacious argument, in the course of this contest?

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*The nature and Amount of certain injurious Reflections  
upon the Conduct of the Cause.*

THE complete faith which your Lordship was pleased to give to Menager's testimony implied  
not

not only a disbelief of the whole evidence on the part of the plaintiffs, and an imputation on all the various proofs, which afforded such strong and powerful conclusions against the truth of the contested delivery ; but it was accompanied with conjectures, insinuations, and assertions, highly prejudicial to my character and conduct,—If founded in truth, these insinuations were of such a nature, as must have reflected indelible dishonour upon me ; but if false, the world will judge, on whose head that dishonour must now fall.

Without my having been examined, you made use of me, as a witness in support of the truth of Menager's assertions : You maintained the *competency*, and *propriety*, of my appearing in evidence against him, to contradict his assertions ; As I had not done so, one inference you made, was in favour of the veracity of this witness ; but the other inferences, and insinuations of the blackest nature, though conveyed in decent language, were, That at the very commencement of the cause, I must have been struck with the facts and circumstances learnt from Menager, and convinced of the truth of his story, as well as of the necessary application of it to Lady Jane Douglas's delivery ;—This joined with the false conjectures already mentioned, where your Lordship did me the honour to suppose, that I had concealed from the French council, the surprising intelligence thus received from Menager ; and, that for a similar reason, I had avoided his examination in the French action, made up indeed a very complete and highly finished picture of my conduct ; and I had the mortification to perceive, that the picture thus composed, though entirely a work of imagination, did not fail to make a strong impression on many of the noble lords to whom it was that day exhibited.

If

If I had been capable of the conduct thus directly or indirectly imputed to me, I shall readily agree, that I deserved, not only to be despised as a fool, for thinking it practicable to disprove the reality of a delivery which really had happened, but to be abhorred as a monster of wickedness, capable of acting such a part, in opposition to his own internal conviction, I should have been guilty of such a complication of crimes as is rarely to be met with ;—Attacking, contrary to my own persuasion, the birthright and most essential interests of one innocent person who had done me no injury ;—The character and honour of his parents and others ;—And, deceiving at the same time, those for whose interests I was acting,—and those in conjunction with whom, and by whose advice and assistance, it was necessary for me to carry on this contest.

When your Lordship was distributing these insinuations in that august assembly, it was my fate to be present ; and I confess that I was not less struck with surprise, than inflamed with indignation, at the barbarity and injustice of your imputations. They were the more barbarous, that I had no means of redressing myself, nor was it possible for me to have foreseen, that I was to be attacked upon this ground.

If your Lordship, from your own feelings, had been possessed of any idea, how much, and how strongly, a man who values his integrity and reputation more than life itself, must feel upon occasions of this kind, I can hardly think, you would have been so inhuman as to have branded me with those accusations, and before such an assembly ; but if feeling for others be a stranger to your breast, how strong, if you have any regard to your own weight and reputation with the public, must be the feeling for yourself, when it is announced and proved to the world, that this attack, made by the Lord  
Chief

Chief Justice of England upon an innocent man was altogether on false ground ; and that the conduct of the person attacked, had been precisely the reverse of what it was upon that occasion represented to have been.

If, in deciding this great contest, any facts or circumstances appeared to you material, which had not been stated or explained in the *Cases*, or in the pleadings, it was your duty, my Lord, and in your power, to have called for an explanation of them, either from me, who attended at the bar, or from the counsel in the cause ; If I had been examined, and had given *a false evidence*, I could not possibly have been worse used, than I was in this case, for having given *no evidence at all* ; but when there were such obvious means of learning, with certainty, what evidence I was in condition to give, it was your duty, I say, my Lord, to have abstained from conjectures, and to have made use of these means, either by suggesting to the council at the bar what points you wished to have cleared up ; Or by appointing an examination of me, which appointment would have totally removed every objection or scruple, either of competency or delicacy, which had hitherto prevented my appearing as a witness.

If either from error, or from any other motive, I had hitherto abstained from appearing as a voluntary evidence, these surely were no reasons for not requiring from me that testimony ; A person acting in the manner I did, was not the less worthy of credit, that he had not intruded with his testimony.

If your excuse for not calling upon me was, that you could not trust to the evidence of one so deeply interested in the contest, that very excuse proves the justness of the principle before mentioned, established in the law and practice of Scotland, with regard to the *incompetency* of my appearing as  
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an evidence. If on the other hand you had no doubt of my telling the truth, there can be no excuse for your not having required my testimony, if you thought this a material part of the cause; but still less can you be vindicated in making use of me as a witness in support of your favourite point of Menager, without examining me at all, and in aggravation of this, making inferences and insinuations, as if I had persevered in the cause, contrary to what must have been my own conviction.

This is an inference, I must be allowed to say, which your lordship was not entitled to have made, even if it had been ascertained by my own, or by any other unquestionable evidence, that Menager really had, in the beginning, given to me precisely the same account of facts and circumstances, which his subsequent deposition in 1764 contained; for it has been already observed, that admitting the truth of every word in that deposition, still, upon balancing the proofs for and against the delivery in question, those which afforded such powerful conclusions against the truth of that fact, greatly overbalanced the conclusions arising from Menager's evidence. If this be so, would it not have been a more *natural*, as well as a more *charitable* supposition, on your Lordship's part, to have presumed, that, when these proofs against the truth of the delivery, poured in upon me from all quarters, they had inspired that conviction, which left me no choice as to the conduct I was to pursue? I say, my Lord, that the just and fair presumption inclined to this side; What shall we say then of an attempt, upon such light grounds, not only to deprive me of that fair interpretation, but also to establish an opinion, that I had acted a most dishonourable part, for such it must have been, if in this cause I had acted contrary to my own conviction?

Hitherto

Hitherto I have proceeded on the supposition of your Lordship's being totally in a state of uncertainty, with regard to the evidence which I was in a condition to give upon this matter; but it would perhaps be an excess of good nature to continue that supposition in all its extent.

It must be presumed that your Lordship had carefully read the long *memorials* given into the Court of Session, and the *cases* to the House of Lords, as well as the other papers in the cause; If you did, you must have perceived, that instead of assenting to the truth of Menager's evidence, and assertions, every material part of them was expressly denied on the part of the plaintiffs, and the whole tendency of their arguments was to shew that there could be no reliance upon any one avowment of this witness.

Your Lordship, I believe, had occasion to know, during the dependance of the Appeal, that nothing was inserted in the plaintiffs' *Case* to the House of Lords, or in their papers to the court of Session, particularly no assertion of facts, but what had either been drawn up by me, or which the gentlemen by whom they were drawn up, had inserted with my concurrence. The assertions contradictory to Menager's evidence, and the arguments on that head, might therefore naturally have been understood by your Lordship, as so many positive assertions on my part, in opposition to what this witness had said, and hence it was easy for you to have perceived what sort of evidence I was in condition to give, and likely to give if called upon in this matter.

Whoever takes the trouble of reading over the papers in the cause, will be amazed to find, that your Lordship after perusing them, had ventured to maintain, or take it for granted, that I had assented to the truth of Menager's assertions. There

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are in page 95 of the plaintiff's *Cafe* to the House of Lords, some paragraphs, which, of themselves, were sufficient to bar your Lordship from such suppositions and arguments; a reference is there made to an assertion in the plaintiff's *Memorial*, which is repeated in the *Cafe*, in these words: "If the respondents (*i. e.* plaintiffs) had thought it at all regular or allowable, they could easily have produced witnesses on their part, to prove accounts given by Menager, to many persons both British and French, who had conversed with him on the subjects mentioned in his deposition, very different from the accounts he has there given; but they abstained from this, because they thought it contrary to the genius of the law in Britain, to set up the extrajudicial conversations of a witness, in opposition to his deposition."

And further, it is there said, "That if it had been *competent* to bring a proof of the extrajudicial conversations of Menager, and particularly of that conversation alluded to by him, where Mr. Stuart was present, the falsehood of Mr. Menager's assertion would have been made manifest."

These paragraphs contained, not only a direct contradiction, on my part, to Menager's assertions, but they shewed, upon what principles it was, that the plaintiffs had abstained from producing the evidence, which, if it had been *competent* or *allowable*, they could have produced, for proving the falsehood of this man's testimony, with regard to what had passed at the first interviews with him.

If in these points we were under an error, was it not incumbent on your Lordship, when that error was so clearly pointed out to you, to relieve us from the mistake, and to desire to know from us, what that evidence was, which he had expressly asserted we were in condition to produce?

Was



Was it proper, my Lord, was it consistent with that dignity of character, so suitable to Judges in high situations, to avoid any examination of me, or even any suggestion to the counsel at the bar to speak to these points; yet, at the same time, to conclude against me, and against the plaintiffs, as if I had been examined, and upon examination had given such evidence, as might have authorised every argument and insinuation that was made use of to my prejudice; and all this contrary to the authority of the papers which were then in your Lordship's hands?

These papers, indeed, did not contain any refutation of those parts of the injurious insinuations by which I was supposed to have concealed from the French counsel, what had passed at the first interviews with Menager, and by which it was presumed, that, from similar bad motives, I had avoided this man's examination in the French action;—It was impossible to expect, that either the papers, or the pleadings for the plaintiffs, should have contained any refutation of suspicions which had never been indulged or ventured upon by the opposite party, in any stage of the cause; for which there was not the shadow of foundation, either in reality, or in any part of the volumes of proof; and which had never occurred, even to the imaginations of any of the various able counsel employed by the defendant in the course of this contest:—It was a discovery *reserved* for your Lordship's superior genius; and the communication of it was by your Lordship *reserved* till that period, when no answer to it could be given, either verbally or in writing:—It was in your speech which concluded the debate on the day of the decision, that these imputations against me made their first appearance.

In vindication of your Lordship, it will be said, perhaps, That, at the time of the decision, you had

had not examined so minutely the various facts contained in the volumes of proof, or that the true state of those things which had given rise to your suspicions and imputations, had not, at that time, been brought so completely under your view, as it has now been by what I have wrote :—This, my Lord, would be sufficient excuse in the present case.—A Lord Chief Justice, when making an attack upon a private man, in presence of the most illustrious assembly in the world, in a place where no defence could be made, in a place too, where that Judge enjoys the highest degree of confidence, (especially in questions of appeal from the Northern part of this island) ought to be perfectly sure, that he has truth and justice on his side, before he ventures to throw his poisoned darts : The advantage of the situation from whence they are thrown, is such, that they can seldom fail to prove mortal to those against whom they are directed, whether they be deserving of that fate, or guiltless.

It is painful to me, and not without much reluctance, that I find myself obliged to excite the public attention to your conduct in these particulars : Were there no other grounds to justify it, this address to your Lordship would stand justified upon this ground alone, that you had forced me to it in defence of myself ; and when compelled to this disagreeable office, I have not attacked you by declamation, or rhetoric, or insinuations, or general imputations ; I have employed only facts and arguments derived from the very essence of the cause which lay before me, and these arguments are of so very striking and obvious a nature, that they must make an impression on the most prejudiced, and carry conviction even to the most ignorant and unexperienced.

I boast

I boast not of any superior abilities in this discussion : I know how much I should be overmatched by your Lordship, if ever the controversy came to depend on that issue ; but I find myself so strongly entrenched in the very nature of the ground, that I do not fear the utmost vigour of your assaults.

In vain you will wrap yourself up in silence, covered with the false appearance of disdain : In vain will you affect scorn towards this expostulation from a private Gentleman ; and, though I am proud only of my conscious innocence and integrity, I shall add, One whose birth intitles him, when provoked by injury, to feel no inferiority to your Lordship ; and One possessed of as fair a fame as you yourself enjoyed, even before the decision of this cause :—I throw out this defiance in my own name before the world ; and if no answer is given to it, (as I am confident none satisfactory ever can) the person whose reputation you attempted publicly to murder, though then obliged to keep an indignant silence, will not go unlamented and unrevenged to his grave.

## LETTERS

LETTERS referred to in pages 25th and 26th  
of the preceding Letter.*From Mr. Danjou.*

Paris, 20 Dec. 1770.

**J**E sçay bon gré, Monsieur, au vent qui vous, a retenu sur nos côtes, puisqu'il vous a donné le tems de m'écrire avant votre retour de Londres. Je souhaite que vous y jouissiez actuellement du bien que vous ont procuré les eaux de Spa et le bon air de France. La reconnoissance d'un remède si efficace, l'attachement et l'estime de vos amis doivent vous y rappeler, et rien ne me flatte plus que l'espérance de vous y revoir l'année prochaine.

Nous n'y parlerons plus de cette malheureuse affaire dont la poursuite a presque détruit votre santé, et dont l'événement a si cruellement blessé votre cœur. Tout ce que vous m'en avez dit ici a augmenté ma sensibilité, et j'ai peine, en vous en écrivant encore, à retenir mes expressions sur l'imputation qu'on s'est permis d'hazarder contre vous et vos conseils. J'en suis principalement affecté à l'occasion de la déposition de ce ridicule chirurgien nommé Menager, dont vous sçavés que j'ai toujours regretté qu'on ne pût depeindre la phisionomie, la countenance, et l'embarras, lorsqu'il a paru devant les commissaires qui l'ont interrogé de part et d'autre.

Je peux bien comprendre que, par des raisonnemens captieux, on ait tenté de tirer parti du langage équivoque et obscur que ce témoin a toujours affecté de tenir, mais je ne m'accoutumerai jamais à penser qu'on ait pu proposer, avec confiance, et avec succès, des présomptions injurieuses à votre personne, sur ce que vous ne l'avez pas fait entendre à la Tournelle. Si vos Loix permettent de juger sur des moyens de cette espèce, elles doivent donner ouverture à bien des injustices, et il n'en fut jamais de plus grande, puisqu'il est certain que lors de l'information à la Tournelle, vous étiez d'avis qu'il fût entendu. Je pensois comme vous, et ce ne fut que sur l'opinion de M. D'Outremont que nous en abandonâmes le projet.

Je

Je me rapelle très clairement, que vous nous fîtes observer que dans la première entrevue que vous aviez eue avec cet homme, il vous avoit paru disposé à réaliser par son esprit romanesque, l'aventure singulière du prétendu accouchement de Lady Jeanne, que presumant que vous étiez chargé de chercher des preuves pour le constater, il vous avoit semblé occupé d'en appliquer toutes les circonstances à son ami La Marre ; et que même ayant été déconcerté par la représentation des fausses lettres de ce La Marre qui faisoient mention de son voyage d'Italie et de Naples, il avoit insisté à dire qu'elles pouvoient très bien être de lui, quoiqu'il n'eût jamais voyagé en Italie, mais que la mention de ce *voyage de Naples* étoit une expression allégorique pour faire entendre qu'il avoit passé par le remède Antivenérien, parce qu'en France on désigne la *Mal Venerien*, par *Mal de Naples* d'où on pretend qu'il y est venu, et qu'on appelle *voyage de Naples*, l'absence nécessaire pour s'en faire guérir.

Toutes les absurdités de sa conversation vous firent croire, comme à moi, qu'il seroit bon de fixer le récit fabuleux de l'imagination de cet homme avide de choses singulières ; mais M. D'Outremont nous fit sentir, que ce seroit presque manquer de respect à la justice, que de poursuivre un témoin dont le témoignage seroit contredit non seulement par ses propres circonstances mais par le témoignage contraire de la veuve de La Marre qui éloignoit toute idée de vraisemblance que son Mary eût été, ou pût être l'accoucheur de Lady Jeanne ; par la preuve évidente de la fausseté des quatre lettres à lui attribuées ; par tous les faits sans nombre exclusifs de la possibilité de l'accouchement ; et encore plus par la certitude morale que nous avions de constater par l'interrogatoire du Chevalier Stewart, que Pierre La Marre, ami de Menager, n'étoit point celui qu'on prétendoit avoir été l'accoucheur de Lady Jeanne ; Nous l'eûmes, en effet, cette certitude par les réponses du Chevalier Stewart, qui furent à nos yeux autant des mensonges grossiers, mais exclusifs de l'ami de Menager pour l'accoucheur en question, et nous nous confirmâmes dans l'opinion de Mr. D'Outremont pour ne plus penser à le faire entendre.

Qui auroit jamais pu prévoir que cette délibération prise par conseil, par amour de la vérité, et par respect pour

pour la justice, eut pû donner lieu contre vous Monsieur, à une conjecture injurieuse et calomnieuse, et encore plus, qu'elle eut pû être écoutée et suivie de succès ?—mais je me livre bien inutilement à mes réflexions, l'affaire est jugée ; Il faut respecter en silence les jugemens contre lesquels la loi n'ouvre point de voie de recours, et cette ouverture de cœur entre nous n'y changera rien.

Oubliez donc, Monsieur, l'injure et l'événement qui a confondu toutes nos espérances. Ce n'est certainement pas vous qui avez, rien perdu dans l'estime des gens d'honneur ; pendant tout le cours de la poursuite de cet important et mémorable procès, vous conserverez toujours leur témoignage avec celui de votre conscience. Je peux même dire que s'il étoit quelque fois possible de manquer par excès de délicatesse, vous auriez peut-être à vous reprocher d'avoir trop pris de précautions pour ne pas encourir l'apparence même du soupçon.

Je fais mille respectueux complimens à Mr. votre frère et à tous vos amis dont le souvenir ne me rappelle que l'honnêteté et la candeur qui m'ont inspiré pour la vie l'attachement et l'estime avec lesquels je suis,

Monsieur,

Votre très humble et très obeissant serviteur,

(Signé) D A N J O U.

Recevez les remerciemens et les complimens bien sinceres de toute ma famille.

*From Mr. D'Outremont.*

J'AI recù, Monsieur, la lettre dont vous m'avez honoré, par laquelle je vois que vous êtes arrivé à Londres en bonne santé. Le séjour trop court que vous avez fait à Paris, et les entretiens que nous y avons eû, ont renouvelé mes regrets et ranimé ma sensibilité sur l'événement fatal de la cause que nous avions défendu avec tant de confiance : à la première nouvelle que j'en recus dans le tems, j'en fus saisi d'étonnement, sans pouvoir comprendre les motifs qui ont pû déterminer un tribunal si respectable, et ce que vous m'en avez dit n'a rien diminué de ma surprise.

Tous les faits qui ont été éclaircis dans l'instruction de cette grande affaire, ont tellement multiplié les preuves de la supposition d'état dont il s'agissoit, qu'il est impossible que leur réunion n'entraîne la conviction de tout esprit raisonnable et attentif. La multiplicité de ces preuves, et la force quelles se prêtent mutuellement, est même une espèce de prodige, et devoit être une occasion précieuse pour la justice de faire triompher la vérité. Toutes et chacune des circonstances qui ont précédé, accompagné, et suivi le prétendu accouchement de Lady Jeanne Douglas en excluient la possibilité, et en prouvoient la supposition, avec tant d'évidence qu'avec quelque scrupule qu'on appretiat toutes ces inductions, il n'étoit pas possible qu'on n'en fut persuadé.

Cette reflexion, Monsieur, dont je suis pénétré, me fait croire, qu'on ne peut attribuer la disgrâce que vous avez éprouvée, qu'aux préventions injustes qu'on a pû prendre sur le caractère de vos temoins, et sur la nature des recherches et des démarches qui ont été faites pour les produire ; or c'est-la ce qui m'afflige le plus. Quand je me rapelle, que j'ai été, ainsi que M. Danjou, confident et conseil de toute la conduite que vous avez tenue, que nous avons pour ainsi dire guidé vos pas, et que lisant sans cesse dans le fonds de votre pensée, nous n'y avons rien vû que de conforme aux sentimens d'honneur dont nous faisons profession ; Quand je me rapelle, que si nous avions quelque reproche à vous faire  
c'étoit

c'étoit peut-être de porter trop loin la délicatesse scrupuleuse qui domine dans votre caractère, pourrais-je n'être pas touché de voir que la calomnie s'est jointe à l'injustice ?

Dans une affaire de cette nature, la réputation des personnes qui l'ont conduit ne peut manquer d'influer sur l'opinion des juges; nous avons fait choix pour entreprendre et poursuivre celle-ci des conseils les plus éclairés et les plus intègres—c'est aussi ce que nous avons principalement considéré dans les témoins que vous avez produits; mais la confiance qui naît de la bonne réputation des personnes ne peut s'étendre jusqu'à une nation étrangère où elles ne sont pas connues. On y aura regardé comme suspects des témoins qui sont reconnus ici pour être irréprochables, et au contraire on aura ajouté foi à d'autres produits par votre adversaire qui n'en auroient mérité ici aucune.

Le St Menager par exemple, a fait des dépositions absurdes et romanesques: Les premiers discours qu'il vous tint, avoient si peu de rapport au prétendu accouchement de Lady Jeanne Douglas, et étoient si fabuleux, que je fus le premier à vous détourner de l'idée que vous aviez de la faire entendre dans la procédure de la Tournelle du parlement; et les dépositions qu'il a fait depuis sont en effet démenties par toutes les preuves du procès. Seroit-il possible qu'on s'y fût arrêté, et qu'on vous ait fait un reproche de n'avoir pas fait entendre ce témoin à la Tournelle? Si cela est, je vous dois la justice de reconnoître que c'est moi qui en suis la cause innocente, n'ayant eu d'autre motif en vous conseillant de ne pas le faire entendre que le respect qu'on doit à la justice; et si ce témoin avoit été connu à Londres, comme il l'est à Paris, sa déposition n'auroit pas pu y faire impression.

C'est donc, Monsieur, à l'éloignement des lieux que j'attribue la fatalité du jugement que vous avez éprouvé, et qui auroit été tout différent en France où la vérité étoit connue dans sa source. Mais quoi qu'il en soit, nous, aurons toujours la satisfaction de nous rendre l'un à l'autre le témoignage d'une conduite irréprochable: Si cette affaire étoit à recommencer, je ne pourrais m'associer de conseils plus sages que ceux que nous choisismes dans le tems, et vous, Messieurs vous



conduire avec plus de droiture et d'honneur ; ainsi nous n'avons point de reproche à nous faire, et j'aurai toujours retiré de cette correspondance l'avantage de connoître l'homme du monde qui mérite le plus d'estime, et à qui j'ai voué le plus sincère attachement.

C'est avec ces sentimens que je suis pour la vie,

Monsieur,

Votre très humble et très obeissant serviteur,

(Signé) D'OUTREMONT.

Agrées Monsieur les respectueux complimens de toute ma famille qui a été bien fâchée que le séjour que vous avez fait dans cette ville ait été si court.

A Paris ce 3 Jan. 1771.

## L E T T E R IV.

MY LORD,

**T**HE nature and importance of the subjects touched upon in the preceding letters, have imperceptibly led me into a longer discussion than I was at first aware of: There is too much reason to apprehend, that what has already been stated will be felt as tedious; and I cannot help also regretting, that the length of the preceding parts of this inquiry precludes me from doing justice at present to some other material articles, connected with the arguments employed by your Lordship, at the decision of the Douglas cause.

The points are endless, where I might attack your decision, at least the arguments on which it proceeded; but I am well apprized of the general indolence which prevails, and of the reluctance which most readers would feel, to enter into the minute details of a cause, which, though the most curious, and the least intricate, yet by the variety and luxuriance of its branches, is the most complicated, that ever was brought before any human tribunal.

I have therefore selected those branches only which could be apprehended with the least effort of thought, or labour of application: Some others of the same nature I have all along had in view, and as soon as I had arranged my ideas with regard to them, I meant that they should have been successively presented to your Lordship.

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To do justice to those remaining branches of the cause, and to your Lordship's reasonings upon them, would, I find, lead into a longer detail, than could well be comprehended within the bounds of one, or perhaps two letters. Besides the attention due to your Lordship's time, some degree of attention to my own, and to some material concerns which have a claim upon part of my time, oblige me to postpone the consideration of various particulars to a future period.

Instead of entering upon any discussion of them at present, I shall therefore beg leave only to hint at some of those topics, which remain as a fund of future correspondence with your Lordship.

One of these remaining topics, which, on account of its importance well deserves to be discussed, relates to the proofs of Lady Jane Douglas's residence at *Godefroi's* in July 1748, at the time of the asserted delivery in the house of *Le Brun*. In the course of this branch of the cause, I shall have occasion to shew, that the principles adopted by your Lordship, in reasoning upon the *application* of the supposed and *contested facts* under the article of Menager's evidence, would, when applied to the *established* and *indisputable facts*, which stand as the basis of the arguments for proving the residence at *Godefroi's* on the 10th of July 1748, have led to a clear and decisive *conclusion* as to the whole merits of this great contest.

In the second place, I shall beg leave to remind your Lordship of the astonishing supposition, to which you were obliged to resort, for supporting the veracity and credit of Helen Hewit; a witness indispensibly necessary to the defendant.

You perceived, that her perjury in one palpable instance could not be denied, if it was true, that Lady Jane Douglas and she had made an excursion from Paris to *Versailles* in Summer 1748: The truth

truth of that fact was so firmly established by the deposition of Madame Blainville, who lodged in the same house with them at Paris, and who went in the coach with them to and from *Versailles*, and dined with them there, and by the depositions of *seven other witnesses*, that there was no other resource left, but that which your Lordship ventured to employ, when you had recourse to the bold attempt of discrediting the whole of these witnesses, by supposing without a shadow of evidence, that all of them were perjured.

The single testimony of Mrs. Hewit, so deeply interested in this contest, that she could not, consistently with her own safety, and the interest of the cause which she supported, acknowledge this fact of the visit to *Versailles*, was by your Lordship represented, as affording complete evidence of the truth, pure, and untainted.

In the scales of justice sustained by your hands, this woman's testimony (the most unworthy of credit of any that perhaps ever appeared in a court of judicature) was thus made to outweigh the depositions of *eight persons* of honest fame ; who deposed from the best cause of knowledge ; who had no interest in this matter ; and against whom there is not in the whole extent of the proof any one circumstance of imputation.—This therefore is a subject which will merit a full discussion in some future Letter.

Another extraordinary supposition was made by your Lordship, which will also be well entitled to a full consideration. I allude to that part of your argument, where, without any evidence, and without resorting to that which it was in your power to command from the other party, (who had in their possession copies of the Tournelle depositions) you ventured to suppose, and even to maintain, That *Godefroi* and his wife, and the family of *Michelle*,  
with

with *Madame Blainville*, and others, had, at the time of their examination in the Tournelle, given evidence different and inconsistent with that which they afterwards gave, when examined under the commission from Britain. Here too there was a malignant insinuation against the conduct of the cause on the part of the plaintiffs ; for you pretended to trace a variation of the *plan of their evidence*, after a certain period ; a supposition contrary to the fact, but supported by subtle and fallacious reasonings, which, however, it is happily still in my power to refute, not only by a detection of the fallacies, but by an appeal to the most authentic evidence in writing.

These are the principal articles which at present occur to me as subjects of future examination ; and in the course of that inquiry, there may happen to be occasionally some slight animadversions made upon the expressions and colourings employed by your Lordship in discussing some of the inferior parts of the cause : One instance of this sort, worthy of notice, relates to a remarkable sentiment and expression which escaped from your Lordship, when talking of the picture of *Madame Mignon* : You said you had observed from my journal, that such a picture was drawn, but remarked, that it had not in the course of the cause been produced ; whence you concluded, that it must have been purposely concealed ; and for this reason, Because the picture would have shewn, that there was no resemblance between her and the defendant. After assuming this mixed state of facts and conjectures, (in which all was erroneous, excepting the simple assertion of a picture having been drawn) you then took occasion to give your sentiments upon the great force and efficacy of a *proof of likeness* in questions of this nature. This wonderful sentiment (a very dangerous one for the defendant's cause)

was

was pushed indeed to a great length ; and the expression made use of by your Lordship, that it would have been *cause gagnée*, if we could have proved a *likeness* between the defendant and the family of Mignon, was too amazing and too extravagant not to be remembered, or to be allowed to pass on a future occasion altogether unobserved.

It was my intention, and my wish to have comprehended within the bounds of this Letter a full examination of all the preceding articles ; but as the considerations already mentioned oblige me to alter that plan, it seems to me suitable on my part, while I make this apology for postponing a little the completion of this inquiry, that I should give your Lordship this general view of the remaining fund of investigation ; and that I should add to it an assurance, that the articles which I am now obliged to postpone shall be resumed by me on a future occasion : I flatter myself, that the interval will be so short, that your Lordship will have no reason to impute to me negligence or forgetfulness.

Before this pause in our correspondence takes place, I must beg your Lordship's indulgence, if I should happen to trespass a little upon your time, while I say a few words with regard to my own situation in this affair, and the motives which originally impelled me to the troublesome undertaking in which I have been engaged, and also with regard to the hardships and injustice with which the guardians to the Duke of Hamilton and myself in particular, have had to encounter, and the reasons which have induced me thus particularly to address myself to your Lordship, upon the whole of this interesting subject.

THERE

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THERE are, my Lord, in my opinion, few occasions which can justify a private man's troubling the world with what relates to himself personally, and there is no subject so difficult to write upon with any degree of propriety : Yet situations do sometimes occur in life, where silence would be as blameable and improper, as the impertinence of individuals, when they intrude upon the public with a detail of their own private and frivolous concerns. The nature of the occurrences which have unexpectedly fallen to my share, and which relate not to myself alone, will probably exempt me from any imputation of this latter sort.

Without any tincture of that restless disposition, which makes some men so readily engage in scenes of contention, animosity, or adventure, it has been my fate to be thus embarked, contrary to my wishes or inclination ; and, after being once unwillingly engaged in a situation of the greatest anxiety and contention, it was no longer optional to me to quit my station, until the storm was over.

The first step, once taken, necessarily engaged me to proceed to the final conclusion, and by this means it has fallen to my lot, to pass seven years of my life, in situations full of agitation, which required more unremitted attention and anxiety, than would ever have been with me a matter of choice.

Neither could it be agreeable to engage in an enterprise, where, from the nature of the contest, it was easy to foresee, that, let my conduct be ever so blameless, I must necessarily draw upon myself the rancour and animosity of antagonists contending

ing for the deepest stakes, and be exposed to the violence of all the vindictive passions, which generally actuate the breasts of interested adversaries in controversies of this nature.

By the particular appointment of the father of the present Duke of Hamilton, I was left one of the guardians to his infant children, and the affairs of that family were under the administration of the guardians at the time of the Duke of Douglas's death in the year 1761.

That event gave rise to a competition for some of the honours, and for all the wealth of the Douglas family; one of the competitors was not named in the settlements but claimed under the description of nephew to the Duke of Douglas, as son of Sir John Stewart and Lady Jane Douglas, the Duke's sister: If the pedigree, thus set forth, was not founded in truth, it put an end to the pretensions of that claimant, and this, in many respects, would have produced material variations, with regard to the nature of the claims, which both the young Duke of Hamilton, and his brother Lord Douglas now Duke of Hamilton, would have had upon the succession of the late Duke of Douglas.

The extraordinary fact of Lady Jane Douglas's delivery of two sons at a birth, in the 51st year of her age in a foreign country, removed from the observation of friends or enemies, and attended with many peculiar and suspicious circumstances of conduct, before, and after, as well as about the time of the delivery, had given rise to many doubts and surmises very unfavourable to the truth of this asserted event: These were universally diffused over Scotland, and were in particular known to every one of the Duke of Hamilton's guardians.

In this situation, it will be allowed, even by the most prejudiced, that it was natural for these guardians, nay, that it was their duty, to make some enquiries



enquiries concerning this suspected fact, in which the interest of their pupils, the Duke of Hamilton, and Lord Douglas, as well as the honour of the Douglas family, *the head of which the Duke of Hamilton now is*, were so deeply concerned.

No enquiry could be made with propriety or effect till the death of the Duke of Douglas: The Duke of Hamilton, though heir male of the Douglas family, and entitled to succeed, at least, to all the honours and dignities, which had been enjoyed by his own ancestors in the Douglas line, had neither title nor interest, before the Duke of Douglas's death without heirs of his own body, to contest the pretensions of the children acknowledged by Lady Jane Douglas; neither was it practicable for him to have made an effectual scrutiny into this matter before the year 1762; for as there must be some thread by which to conduct an enquiry, this thread never was given till after the death of the Duke of Douglas: That event made it necessary for the person claiming under the character of son of Lady Jane Douglas, to make up his titles by the form of what is called in Scotland *a service as heir*, in the course of which it became necessary for his friends, particularly Sir John Stewart the father, and Mrs. Hewit, to specify the time and place of the claimant's birth, with the names of persons present, and other particulars which might admit of investigation.

It was upon occasion of this service, that the time, place and circumstances of the Defendant's birth were for the first time disclosed to the public, and at the same time were produced the *forged letters* of the persons said to have delivered Lady Jane, and found in her cabinet, and although the authenticity of them was by some suspected, yet it was not till a considerable time afterwards, that the compleat conviction of these letters being forged, and by Sir  
John

John Stewart himself, was attained: It is certain however, that with many discerning persons the proofs attempted at the service, instead of diminishing, served only to increase the suspicions.

It became therefore a matter of serious deliberation with the guardians of the Duke of Hamilton, in what manner to make this essential enquiry.

The point of the greatest difficulty as it appeared to these guardians, was, to find out a person proper to be trusted with a commission of such importance: One, whose proceedings and report might give to the world, and to the guardians themselves, a reliance on the result of his enquiries, whose situation and character might remove all suspicion of any thing improper, who would be equally responsible with themselves, for every step of his conduct, and who could embark the guardians, in no measure, of which he must not share the dangers and difficulties, as much at least as they themselves.

From the situation of the other guardians, it was not to be expected that any of them would devote themselves to such an enquiry: It was also, on many accounts, very inconvenient to me: But at the same time it was found so difficult to fix upon a proper person to undertake it, that at last, after due deliberation, the request of the other guardians, supported and enforced by that of the person then at the head of the family, as mother of the young Duke of Hamilton, made the hard lot of undertaking this task fall upon me alone.

It was not without concern and reluctance, that this request was made to me, on the part of those from whom it came; because they were sensible, that it was, in the first place, asking me to sacrifice, for some time at least, my other pursuits and prospects in Britain; and if the discoveries should give  
rise

rise to a question at law concerning the legitimacy or filiation of the Duke of Hamilton's rival for the Douglas succession, they foresaw that it might prove the source of much animosity against me personally.

The matter was brought to such a point, that it became impossible for me to decline this task, without incurring the imputation of too little concern for the interests of the Duke of Hamilton's family (whose most essential affairs, in the executive part, and in the ordinary course of administration, were then peculiarly entrusted to me;) and without at the same time incurring the further imputation of too much selfish attention, if I suffered myself to be deterred by any apprehension of the difficulties, or hazards, which might possibly attend this undertaking.

The consequence was, that, without any stipulations whatever with regard to myself, I complied with the request that was made to me, and agreed to repair to Paris, the scene of the asserted delivery, where alone the truth or falshood of the asserted facts could be discovered.

The intention of my going thither, was, before I set out in the year 1762, communicated to many of my friends, and to many persons of consideration at London: All approved the propriety of such a measure on the part of the Duke of Hamilton's guardians; but several of my friends who foresaw the scene of troubles I was about to engage in, represented it to me in the strongest colours, and expressed much regret, that it was put upon me to encounter with such manifest difficulties.

Amongst the number of those to whom the request made to me by the other guardians, and the intention of my expedition to France, were communicated, were the late Mr. Yorke, and the present Solicitor General Mr. Wedderburn, both of whom

whom highly applauded the measure : They knew particularly upon what ground, and with what equitable and proper views, of ascertaining the truth, whether favourable to the one party or the other, I entered upon this piece of duty : This fact, your Lordship had occasion to hear from themselves at the bar of the House of Lords.

The only lights which I carried with me to France, for assisting me in the whole of the investigations relative to the Delivery, were the date of the event, and the names of *Pier la Marr* and *Madame le Brun*. I little thought at that time, that these were imaginary persons ; as Sir John Stewart and Mrs. Hewit had recently given these names, and had assigned a distinct function to each, it seemed to me almost incredible, that they would have had the effrontery to name persons who had never existed.

At that time I reckoned so much upon the facility of discovering these essential persons *La Marr* and *Le Brun*, or some of their family, or connections, by whose means I might in a short space of time be well informed of the truth or falsehood of the facts in question, that I set out on this expedition, in some respects, very ill provided for the unexpected scenes, which afterwards presented themselves to me in France.

It was my first excursion beyond the limits of this island, and your Lordship will perhaps be surprised to hear, that this investigation, to which the adverse party have endeavoured to give the appearance of a deep-laid scheme for rearing up a fictitious plan of evidence in France, was undertaken by one, who at that time had not a single acquaintance at Paris,—who carried out with him no letters of recommendation to any person that could assist him—who was then possessed of very little knowledge or experience of the French language  
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for conversation—and who did not carry along with him from Britain any person to assist him in this business.

After some months spent at Paris in fruitless searches for those ideal persons, *Le Brun* and *La Marr*, I was on the point of returning to Britain, and had communicated that intention to the *Duchess* of Hamilton and others, when some discoveries were made of facts important both in themselves, and on account of their gradually conducting to the knowledge of additional facts totally inconsistent with any notion of the truth of Lady Jane's delivery: In this light they appeared not only to me, but to the most eminent counsel in France, consulted by me upon that occasion. The steps and plan of conduct advised by these counsel, and approved of by some of the most eminent counsel in England and Scotland, produced the necessity of my making a much longer stay abroad than I had any idea of at the commencement of this affair; and as my continuance was also earnestly requested by the other guardians, I could not decline it without acting contrary to the duty I owed to them and to our pupils; nor was it possible for me to abandon what then appeared to me in such striking colours to be the cause of truth itself.

Thus have I given to your Lordship a true and simple account of the rise and progress of my first expedition to France, of the motives which induced the Duke of Hamilton's guardians to make this enquiry, and of mine for complying with their request; in all which, you will find nothing unnatural, or improper: On the contrary, I am persuaded, that, so far at least, you must approve the conduct of these guardians, and cannot censure mine:

Why then, my Lord, did you abstain from doing justice, at least, to the propriety and reasonableness

bleness of the measures adopted by the Duke of Hamilton's guardians in making enquiry into this matter? And why did your Lordship suffer to pass, without reprehension, the illiberal and unjust attacks made by the counsel of the adverse party, in their papers and in their pleadings, when they painted in the falsest colours the designs and conduct of the Duke of Hamilton's family, of his guardians and of myself in particular, as pursuing a diabolical and deep laid scheme for depriving Mr. Douglas of his most valuable rights, and for rearing up, by the corruption of witnesses, a false and fictitious proof against the evidence of his birth.

It will not easily be believed that your Lordship, possessed of so much experience and so great abilities, could have been the dupe of these false and malignant suggestions. It could hardly escape your observation, that illiberal invective is one of the usual expedients employed on the side of falsehood, and is seldom or never resorted to by the advocates of truth.

WHEN you heard the conduct of the Duke of Hamilton's guardians arraigned, it might have occurred to your Lordship, that they could not possibly have had any other motive, but a sense of duty, and a strong conviction that truth and justice were on their side; for you must have felt that a contest carried on by guardians ought to be viewed under a very different aspect, from that carried on by a man in the management of his own affairs, where he is personally concerned in the event.

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In this last case it is natural to view, with a more jealous eye, every step of conduct : A person, deeply interested in his own cause, may be supposed under the influence of passion or prejudice. He is not so likely to form a cool and unbiassed judgment, and if his principles are not of the purest nature, his passions and his views of interest may possibly tempt him to depart from the paths of integrity, and even suggest to him the wicked and infamous expedient of rearing up a false proof by the corruption of witnesses.

But the same motives, which in that case authorise such suspicions, could not in this have any existence. The guardians of the Duke of Hamilton could not reap any profit to themselves by the success of their pupil, had they assisted him to attain all the wealth of the late Duke of Douglas.

These guardians gave their time and attention to the Duke of Hamilton's affairs, without either salary, appointment or emolument of any sort : They had sufficient merit with the Duke of Hamilton's Family on account of the trouble they took, and the attention they gave, to the management of his concerns, and of the estates left to him by his ancestors, without having any occasion to seek for additional merit, by endeavouring, without just cause to acquire for him other estates.

They knew, that if there was just reason to believe, that Mr. Douglas was truly the son of Lady Jane, they could be subject to no blame or disadvantage for not endeavouring to prove the contrary : They also knew, that supposing him to be a supposititious child, the proof of it must be attended with infinite trouble, and perhaps risk to themselves, and be productive of much animosity and rancour, the bad effects of which they might have occasion to feel, without any prospect of personal benefit, even from the success of the enterprize.

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Was this a situation, my Lord, such as could have tempted any man, or set of men, to engage in an unjust undertaking?

These are not the principles on which mankind act; your Lordship knows, that men in general are too much attached to their own interest, to their ease and their quiet, to put all these to evident hazard, without any object of interest or of passion to incite them, and at the same time without being prompted by any call of duty.

It is therefore a supposition altogether preposterous and absurd, to imagine, that any guardians, who generously expose themselves to these hazards, could enter upon or persist in such an undertaking, without the most real conviction, that their duty and the interests of truth required it of them; or that they could be induced to prosecute it themselves or to approve of others who did prosecute it, by any other than the most honourable means.

I protest, my Lord, that I am almost ashamed to consume a moment's time in vindicating either the guardians or myself from the imputations which were directly made or indirectly insinuated, against our intentions and conduct in this cause. The well-established characters of the persons thus unjustly and scandalously attacked, ought, wherever they are known, to afford a sufficient refutation of every calumny of this nature, and at the same time to render those who thus basely traduce them, objects either of contempt or of detestation.

Without transgressing the bounds of propriety or modesty, I may venture to affirm, that if any improper designs, or plan of conduct, had been necessary to the Duke of Hamilton's success in this cause, his guardians were men incapable of meditating or adopting any such iniquitous schemes; and further I may be allowed to add, that if they had been capable of it, they would have made



choice of another person than myself for carrying such designs into execution.

But as no man, nor set of men, be their conduct ever so laudable or free from blame, can be secure against the attempts of malice and defamation, I hold it to be proper, on the part of those who are thus attacked, not to defend themselves merely by an appeal to their characters, nor to make use of their general reputation as a sufficient entrenchment; it is more honourable to meet their antagonists in the open field, with the same readiness as if they had no such fortrefs to resort to.

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*The Nature of circumstantiate Evidence, and the Impossibility of disproving by such Evidence a real Delivery.*

IF it be allowed, that either the guardians of the Duke of Hamilton, or the persons they entrusted with the conduct of the cause, were possessed of any portion of common understanding, they could not fail to perceive, that it was a thing totally impossible, ever to rear up a *fictional proof* capable of annihilating the *true facts* belonging to Lady Jane Douglas's delivery, if that asserted event had ever had a real existence.

History and experience have shewn, that it is very possible for impostures to succeed, by reason of the extreme difficulty with which the opposite party has to encounter, on whom the burden of proving the negative proposition lies; but no instance can be shewn of any satisfactory or successful proof brought of the *falsehood* of a *true birth*.

Imposture

Imposture may triumph by assuming the garb and air of truth, so artfully put on as to escape detection ; but to endeavour to prove that to be an *imposture*, which really was a *true fact*, must be the most foolish and the most fruitless of all possible attempts.

On the supposition of a *real pregnancy* and real *delivery*, by what means can they be disproved, or how is it possible to deprive such events of the reality and circumstances truly belonging to them ? But the most hopeless and absurd of all possible attempts, would be that of disproving and annihilating the truth of a real delivery, by the *inferences* arising from a *wide extended chain of circumstances* ; for if such circumstantial proof is raised upon a false foundation, the greater the superstructure is, and the more various the branches of evidence are, the more easily will the whole fabric be overturned.

In an affair which depends on the direct testimony of two or three witnesses, it may indeed happen, that the truth of a fact may be disguised or suppressed by their false testimony ; but he who grounds his cause upon a circumstantial proof, consisting of various branches, and comprehending a variety of separate and independent proofs, established by circumstances and by witnesses unconnected with each other, must be very confident indeed of the truth and justice of that cause.—Witnesses may be corrupted, but circumstances cannot ; nor are they so pliant as the memories or dispositions of men.

From these considerations, a proof by circumstances, so incapable of being perverted, and so liable to detection if false, has ever been allowed to be not only the most free from suspicion, but the best suited for affording to the mind of man the surest indications of the truth ; indications far more convincing and satisfactory than can arise from the positive

positive testimony of a few witnesses liable to error or seduction.

In other causes, I have heard that this used to be a favourite topic with your Lordship; in this I know, that your efforts were employed in diminishing the force and authority of a circumstantial proof.

A moment's reflection ought to have satisfied your Lordship, that even supposing me to have the most depraved heart, capable of attempting a false proof, for the purpose of depriving others of their most valuable rights, still, if you allowed to me any degree of understanding, the manifest *impossibility* of succeeding in such a plan, especially by the means of *circumstantial evidence*, must have been a sufficient security against my attempting it.

For instance, when I set about proving the *non-existence* of *Madame Le Brun* and of *Pier La Marr*; or proving, that on the 10th of July, 1748, Lady Jane was in the house of *Godefroi*; or applying to Sir John Stewart and Lady Jane the circumstances attending the *Enlevements* of the children of *Mignon* and *Sanny*; I could not fail to perceive, how easy a matter it would be for the other party to overturn the whole of this fabric, if they had truth on their side.

In the first place, I had reason to expect, that Sir John Stewart himself, when thus attacked, would have acted agreeable to the natural and necessary feelings of an innocent man, jealous of his honour, by repairing instantly to *Paris*; His reputation and interest, the interest of the person he called his son, and the pleasure of revenge against those who had impeached his own honour, were such irresistible motives to his undertaking this journey, that from the beginning I marked it down as certain, that Sir John Stewart, if innocent, would infallibly follow me to *Paris*.

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I was persuaded, that no difficulty or inconvenience, real or imaginary, nothing but a consciousness of guilt could ever possibly deter him from meeting and counteracting me in France: It was obvious, how easy it would have been for him, when on the spot, to overthrow, by one or two simple facts on his part, any given number of proofs accumulated on mine, if false, or erroneous: He would immediately have pointed out the *house at Paris where his wife Lady Jane was delivered*, and where she was on the 10th of July, 1748. This too must necessarily have led to the discovery of *Madame Le Brun and her daughter*, the supposed witnesses to the delivery, and to many other essential circumstances. Thus at once would have been overthrown all my visionary proofs of the *non existence of Le Brun*, as well as of the residence at *Godefroi's* on the 10th of July, and various other circumstances, from which I had attempted to prove the falshood of the delivery. While this alarming hazard must have been constantly in my view, must it not, on the other hand, have been a considerable incitement to Sir John Stewart's journey to Paris, that he had it in his power, so easily to cover me with shame and confusion, both on account of the folly and the iniquity of my attempt?

Secondly, I must have foreseen, that even if Sir John did not think proper to come to Paris himself he and Mrs. Hewit, would be able to supply their friends who came there with such information as would certainly lead to the discovery of the facts and persons essential to their cause, and such as would easily overthrow any false system of mine.

Independent of these advantages enjoyed by the other party, I must have been prepared to expect, if my system was founded on falsehood, that in the course of the anxious investigations of both parties, some fact or circumstance would certainly come out

out, sufficient to detect the fallacy or iniquity on my part; for if *Le Brun* and *La Marre* were *real persons* concerned in this affair, how was it possible for me ever to succeed in a proof of their *non-existence*? Could I expect to *annihilate* them, and all their Relations, Friends, and Acquaintance, and every writing, record, or paper, that made mention of them, or of their place of residence?

In the same manner was I exposed to certain detection of the falsehood, if without just grounds I had supposed, or endeavoured to prove, that Lady Jane never had been delivered, and that she had resided at *Godefroi's* on the 10th of July 1748. Such supposition, is false, admitted of easy detection, by any tolerable proof of a different house where she then really was, or by the testimony of any person of character, who might have happened to see her or her family immediately after the delivery in another house, or by the first nurses of the children, or those who saw these children recently after their birth, or had seen the accoucheur visiting Lady Jane; all or most of whom would probably have been able to refer to circumstances sufficient for establishing the authenticity of the facts and dates. These, with a variety of other particulars inseparable from a real delivery, afforded most certain means of destroying any hypothesis of mine, if not founded in truth.

All the arguments about the *application* of the *Enlevements* were in the same manner liable to be exposed by a discovery of the *real persons* who had carried off the children of *Mignon* and *Sanry*, or by such a proof of Lady Jane's delivery, or situation in other respects, as made the circumstances of these *Enlevements* totally *inapplicable* to her and her husband.

The same reasoning may with similar force be applied to various other parts of the proof brought on the part of the plaintiffs.

Is there a man bold enough to have entered upon, or to have continued in the prosecution of a system of this sort, exposed to such a variety of hazards, if he were not actuated by the strongest conviction, that truth and justice were on his side; and if he were not conscious, that his real security, as well as his only hopes of success, amidst so many surrounding dangers, must proceed from the firm support of integrity and truth?

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*Presumptions and Proofs in favour of the Conduct on the Part of the Duke of Hamilton's Guardians.*

FROM the nature of the contest, and from the facts, and observations which have now been stated, several reflections obviously present themselves. In the first place, it must be owned, that neither I, nor the other guardians of the Duke of Hamilton, are intitled to much merit on account of the integrity and propriety of our intentions and conduct in the course of this affair; since it has been shewn, that there was no temptation, no motive of interest or passion to incite us to depart from the paths of rectitude; and further, because it must have been so clear and obvious to us, that any scheme of rearing up a false proof, especially by circumstantial evidence, was a thing totally impracticable.

But candour requires that another reflection, equally obvious and just, should also be applied, to wit, That since it was so evident that no scheme of  
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a false proof could possibly succeed, and that there was no temptation for us to make any such wicked attempt, *every presumption* in favour of the rectitude of the proceedings ought to have come to our aid in judging upon this case.

Judges endowed with discernment and impartiality, ought not rashly to have presumed, that in the commencement, or during the conduct of the cause, either I, or the other guardians, did, or suffered to be done, any thing that was unfair: Neither ought it rashly to have been presumed, that, in such circumstances, men of established characters, and enjoying consideration in the world could be so void of sense and of honour, as to forfeit that consideration and character, by iniquitous practices in support of wicked and impracticable schemes, in the success of which they could have had no interest.

It was your duty, my Lord, to have stated fully and fairly both my situation and that of the other guardians of the Duke of Hamilton in this matter, to have excited the attention of the other Noble Lords to it in a particular manner, and to have declared that by the rules of reason and of candour, as well as by those of law, every presumption in this case was in favour of the integrity of these guardians, with regard to their intentions and conduct.

It was your duty to have observed, that this presumption was so strongly founded in the nature of the thing, that nothing but the most direct, clear, and convincing evidence of corruption of witnesses, or of improper conduct on my part could be admissible, or deserve to be listened to.

If the matter had been brought to this issue as it ought to have been, and if instead of having to combat with conjectures and insinuations destitute of truth, and unconnected with precise facts, any  
pointed

pointed charge of corrupt practices had been made against me, the falsehood or frivolity of such an accusation would soon have been made manifest.

Many inveterate enemies I had raised to myself by this contest, and by obeying a call of duty in undertaking a task, otherwise disagreeable to myself; If therefore there had been a possibility of discovering a false step with regard to the rectitude of the proceedings on my part, it would have been seized by my adversaries with the utmost avidity. In the perusal of the proof, your Lordship must have perceived the strongest indications of these dispositions on the part of my antagonists, and of the rancour and malignity, with which they pursued every trivial, or seemingly ambiguous circumstance that could afford them any hopes of being able to involve me.

They went so far as to employ spies, some of them lodged in the very houses of the witnesses. They investigated and led proofs not only of the conversation or words that dropt from myself, but extended their enquiries and proofs even to the idle conversations of the servants that attended me. Yet with all this ardent zeal to discover matter of reproach against me, and with all the advantages which your Lordship procured for them in this cause, by the clause you suggested in the judgment upon the preliminary appeal, in consequence of which my journals and memorandums, and the most confidential papers kept for private use were laid open to the defendants, there has not been discovered the most distant appearance of improper conduct with any of the witnesses, nor any thing that my warmest friends ever could have reason to regret.

Conscious of having neither intended nor done any thing in the whole course of this affair unfit to see the light, I rejoice, my Lord, at the pains that  
have



have been taken, to make manifest the whole progress of my conduct: It gives double force to the defiance which I now give to your Lordship, and to all mankind, to give a single instance of any thing reprehensible in my conduct with the witnesses, or of any attempt, either by pecuniary motives, favour, reward, or promise of any sort, to pervert the truth, in any respect whatever.

Besides the evidence arising from all these proofs and presumptions, I might with safety appeal to another test of my conduct, and foregoing other advantages might even agree, that this test should of itself be decisive,—I mean, the opinion entertained, and the reports made upon this subject, either by the general voice of *Paris*, and the persons of the greatest consideration there, or by the voice of the most respectable British subjects, who happened to be at *Paris* during the whole, or any part of the period of this contest.

If the prevailing opinion of French and British at *Paris* was so much in favour of the plaintiffs and their conduct, it must be imputed to something else than the effect of any recommendations from Britain to France, either for assisting me personally, or the cause which I espoused: For it is a fact, *perhaps not unknown to your Lordship*, that whilst I ventured upon this enquiry and proof, without the benefit of any aid, or recommendation from Britain, the party I had to encounter with, enjoyed that aid in an eminent degree: *They had the benefit of most powerful recommendations from Britain*, such as gave them an advantage, seldom enjoyed, during the dependance of a cause, by the one party over the other.

Of all the testimonies with regard to my conduct while abroad, none could be more satisfactory to the public, nor to me more honourable and agreeable in every respect, than the testimony given in  
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the House of Lords, upon repeated occasions, by the truly noble peer of the first rank and estimation in Britain. It proceeded from One, who at the commencement, and during the most essential period of the proceedings in France, was at Paris in the situation of Ambassador Plenipotentiary from Britain, and by that means, had better occasion to be well informed of the true state of facts, and particularly the conduct of parties, than your Lordship, or any other peer who spoke or judged in this cause.

Your Lordship will soon perceive, that I mean the late *Duke of Bedford* :—His name must ever be held in veneration, while there remains in this country, any attachment to real goodness, and to an honourable, manly, generous, and exalted character.

I can appeal to your Lordship, and to every one who knew the temper and sincerity of his mind, whether any thing but real opinion of the propriety of the conduct, could have incited him to give the public and warm testimony he gave in favour of an individual upon this occasion?

No man, held in greater detestation than he did, every thing unfair; and if with all the information which he had so good opportunities of receiving at Paris, he had found reason to believe, that there was any thing reprehensible in my conduct, the first and most severe attack upon me would have come from that quarter.

Your Lordship knows, that there was no disguise nor deceit in the character of this nobleman : You must likewise have observed, that though distinguished by his abilities, and talents, he possessed the firmness and integrity of his mind, untainted by that duplicity and timidity, which so often attend and degrade eminent abilities ;—Pursuing candidly and ardently, what appeared to him right  
and

and honourable, he was equally careless of vain applause, and of unjust or factious clamour.

I must be excused, my Lord, for indulging my admiration of a character so seldom to be met with : and for paying this just tribute to the ashes of one, whose death I shall ever sincerely lament, as a national loss, as well as a real misfortune to all who had the honour and happiness of his particular acquaintance.

Since I have touched upon this subject of respectable authorities, I shall here beg leave to add the sentiments of some gentlemen, who had the best opportunity of investigating every step of conduct, and all the proofs in this cause : The letters received by me soon after the decision of the Douglas cause, from Mr. Yorke, Mr. Dunning, (then Solicitor General,) Mr. Wedderburne, and Sir Adam Ferguson, contain their sentiments on this subject, express in such a manner, as does honour to the goodness of their hearts, deeply touched by the unexpected, and what appeared to them unmerited attacks and insinuations to my prejudice.

Copies of these letters are subjoined ; I reckon myself at liberty to communicate them, because these gentlemen never wished to conceal the opinions which in these letters they have express, and so much disdained any false complaisance of this kind, that they have since the decision taken every opportunity of declaring their real sentiments.

It is not from any principle of vanity, that these authorities are now poured in upon your Lordship ; for though I am proud of the regard and affection of those whose names have in this letter been mentioned, yet surely, it is no foundation for vanity, that I have obtained from doing those things, which if I had done, must for ever have covered me with infamy : All the testimonies with regard to the integrity and propriety of my conduct, however handsomely

handsomely exprest with regard to me, I consider as in fact amounting to no more than this, and therefore they may the more easily be produced without any violation of propriety.

I protest, my Lord, that instead of thinking there is here any room for vanity, my feeling upon this subject is, that there is something *humiliating* in being obliged to appeal to the testimony of any man whatsoever in matters of this kind:—But as few men have at all times the choice of their situations, or can by the most blameless conduct on their parts, be secure against defamation, so the unexpected and unmerited attack made upon me in the House of Lords, has left me no choice in this matter: It makes it now proper for me, to surmount any false pride or false delicacy; and since the attack was made from a quarter which enjoys weight and authority from office, it is suitable to produce in oppositoin to it, the sentiments and authority of others entitled to real respect and credit from more genuine considerations.

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*Answers to certain Objections to this Address.*

ON perusal of these letters, it will perhaps be urged in mitigation of the blame here thrown upon your Lordship's conduct, that you were not the only peer, who spoke upon this occasion: It will be said that there were others who delivered an opinion in favour of the defendant, and who in their argument took up ground similar to that which you occupied: Some of your adherents will from thence probably contend, that this address ought not to have been confined solely to your Lordship.

It would be sufficient for me at present to give this answer, that if I impute to your Lordship nothing

thing but what truly belongs to you, and if the facts thus imputed, are such as authorise the observations made upon them, I have a right to make this address, without giving any other reasons, and without further proof of the propriety of directing it to yourself alone.

It would also be sufficient, were I to say, that I know too much of the progress and true history of what has happened in this cause, from first to last, not to be convinced how much the fate of it, and the incidents which preceded that fate, are imputable to your Lordship, as the great spring and mover of the whole, whether that spring acted visibly or invisibly.

But without availing myself at present of these general answers as sufficient for removing the objection, I shall beg leave to take notice of a few circumstances which peculiarly distinguished your situation in this cause.

It is well known that, on the day of decision, there were only two noble Lords who spoke and delivered their opinions on the same side with your Lordship, while there were two other noble Peers who spoke on the opposite side, and who supported their opinions, by great force of argument, and by that knowledge of the cause which inspired the real conviction under which they spoke.

It was no secret to the world, and your Lordship must have been conscious of it, that if there ever was a cause, where it was in your power to make either scale preponderate, it was in this: If you did not feel the sacredness of the trust that was reposed in you, you must at least have felt that the balance was placed in your hands: and you ought to have foreseen, that the judgment you that day gave, would be rejudged, even in this world, by the great tribunal of the public.

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Without taking into the account the attention paid to your Lordship's truly eminent abilities, and the weight you enjoy in all questions of appeal, there were circumstances in this case, which tended to increase that weight, and they created a degree of responsibility upon your Lordship, not equally applicable to any other Peer in that august assembly.

It was an appeal from the northern part of the island, from that part of the kingdom to which you belong; in appeals from whence, your Lordship has succeeded to great weight and influence since the death of that able and upright judge Lord Hardwick, — justly lamented by all, and by none more than by the inhabitants of the north.

If it might be supposed, that there was an error in the judgment of reversal, the opinions delivered by the two other noble Lords, who spoke on the same side of the question, merit a very different consideration from your Lordship's: To them the circumstances of this very voluminous cause were entirely new, till within a very short time of the final decision: The characters of the persons concerned on the part of the plaintiffs, and of the judges by whom this cause had been decided in the first instance, were to these Noble Lords totally unknown: These things would naturally produce in them a great degree of reliance upon your Lordship in a cause of this nature.

Circumstances of this sort, joined to the knowledge of your abilities, and to the persuasion, that, in your distinguished situation, you could not suffer yourself to entertain any partiality, might naturally, and perhaps imperceptibly, operate upon the minds of judges possessed of the best intentions; especially when they perceived the symptoms of your resolution to reverse the decree of the Court of Session; — symptoms too evident to be mistaken, and too generally known, long before the day of the decision,

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But, my Lord, the same apology (if I may be allowed the phrase) which on the supposition of error, these Noble Lords may be intitled to, could not possibly avail your Lordship: What may serve to account for their conduct, will only serve to render your's more unaccountable.

To your Lordship, the circumstances of this cause were not new: Without taking into the account any extrajudicial attention given by your Lordship to this contest, you had an opportunity to learn a great deal on the subject at the time of the first appeal in this cause, in the year 1764; and at that time you did not fail to take a part in it: The part which you then took must have made an impression on your own memory, since it made so deep an impression on the minds of those who had occasion to attend to your arguments and conduct in the course of that preliminary appeal.

The characters and conduct of that majority of the judges who had decided this cause in Scotland, were also well known to your Lordship. If they had been equally well known to the other Noble Lords who judged in this cause, it may reasonably be presumed, that great weight would have been allowed to the opinions of those judges, at least that their sentiments would have been treated with more respect and attention than they happened to meet with from your Lordship on the day of the decision.

The characters too of several of the guardians of the Duke of Hamilton you had occasion to know. As to myself, I had not the honour of being personally much known to your Lordship, but it will not be thought presumptuous in me to take it for granted, that in the extensive circle of your acquaintance, you must have heard such an account of me, as ought to have restrained from any rash suspicions of improper conduct:

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These considerations, besides others that might be mentioned, serve to accumulate upon your Lordship's head the responsibility in this cause, and to justify the propriety of thus confining this address to yourself in particular.

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There remains to be obviated only one other objection, which so far as I can foresee, is likely to be made to this address.

It may be said, by those who disapprove of any attack upon your Lordship, and perhaps you may think so yourself, that you were entitled to escape any direct attack, at least from me, because in some parts of your speech, you had behaved with a degree of attention towards me ; had made use of polite expressions whenever I was mentioned, and had even gone the length of mingling some compliment with your observations.

I do not deny that there is some foundation for this assertion, and as it is my intention neither to exaggerate nor extenuate any part of your conduct, it would be unbecoming in me to avoid doing justice to this part of it.

Your Lordship took occasion, indeed, to mention to your illustrious audience, that Mr. Stuart, the conductor of the cause, enjoyed a very fair character ; and you were pleased to add, that you believed he deserved it ;—so far I am obliged to your Lordship, and return you thanks for the civility : But it is not to be expected, that I am to over-rate the value of this compliment ; still less, that it should so much overpower me with gratitude, as to make me insensible of the real import of other parts of



your Lordship's speech; or of the true spirit and tendency of the whole of it.

I am too well acquainted with your Lordship's manner of indirect attack, to be amused by the apparent civility of expression: It would be an excess of gratitude indeed, were I to reckon myself much obliged to your Lordship, for the repeated declarations you made of your persuasion of my innocence, while you were artfully painting in the blackest colours, the conduct of the cause, and endeavouring to persuade your audience, that some of the most essential parts of the proof on the part of the plaintiffs, must have been the result of corruption and perjury.

When any gross charge of this kind was made, You were pleased indeed, to represent me as deceived, or imposed upon by those who had been trusted or employed by me in France:—This also I admit was to me civil and polite.

But, my Lord, this veil of civility was of too thin a texture to conceal the real substance it covered.

When your Lordship, with all those powers of eloquence which you so readily command, arraigned the conduct of the cause; when you alarmed the honourable feelings of the noble Peers with *suspensions of corruption and perjury*; and when you announced to them with an air of importance, the pretended discovery of *a change in the plaintiff's plan of evidence after a certain period*, the dullest perceptions must at once have discovered the insufficiency of the covering which you had framed for my protection.

It was evident, and I am ready to admit it, that if the picture drawn by your Lordship was a faithful transcript from Nature, if the transactions were conducted in the manner you represented them they

they would be totally and absolutely incompatible with any idea of my innocence.

In a cause where hundred of witnesses are examined, it may indeed happen, and I believe generally does happen, that there are several who depose to facts which are not true: Inaccuracy of memory, the improper zeal of witnesses to serve one or other of the parties, or the influence of bad passions, may frequently produce false swearing of this nature, without any degree of blame upon those who are entrusted with the general conduct of the cause—— But, my Lord, the facts charged by your Lordship, were such as came home directly to the conductors.

If there was that corruption of witnesses which without evidence you asserted: If the general conduct of the cause merited the attack you made upon it; but more particularly, if there was any truth in your observation that the plan of evidence was changed after a certain period, in order to accommodate it to the purposes of the plaintiffs, these things I maintain could not possibly have happened without my knowledge and direction: The apparent excuse you contrived for me, by imputing the blame to the persons employed in France, I beg leave to disclaim, as inadequate for me, as well as unjust to them.

I must have been the guilty person if such iniquity really was committed; I have no difficulty, and I feel as little apprehension, in admitting this just and obvious inference from the accusations contained in your Lordship's speech.

But, my Lord, besides this indirect attack under the mask of civility and compliment, other attacks less indirect, though not less severe, were aimed at me by your Lordship.

Of these some notice was taken in my last Letter; I shall not now repeat them, any further than

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to declare, that in my opinion, there could not be a more severe, nor a more injurious attack, than that which your Lordship ventured upon, when you took it for granted, that Menager had, in the beginning, told me the same story which afterwards appeared in his deposition, and when upon this ground, you thought proper to insinuate, not only that this conversation with him must have been concealed by me from the French counsel, but that, at the outset of the cause, I must have been *convinced* of the reality of Lady Jane Douglas's delivery.

It is not easy to imagine a greater degree of wickedness and audacity, or a greater want of common sense and understanding, than would have been fixed upon me if I had deserved the imputation thus conveyed by your Lordship.

This I am well warranted to say, since it is so manifest, that the lowest degree of understanding, admitting all the bad qualities of the heart must have prevented such a criminal enterprize on my part, on account of the impossibility of succeeding in it: And, on the other hand, the smallest portion of integrity or virtue, must have been sufficient to restrain me, though I had been possessed of the most able and enterprising genius for plans of iniquity.

No situation can be imagined, in which the conductor of a cause might, with less appearance of presumption, have laid claim to complete credit for the sincerity of the conviction under which he acted; and yet, if any regard had been due to the insinuations contained in some parts of your Lordship's speech, the opinion formed upon my conduct, must have been the reverse of what I was thus entitled to expect.

If there needed any thing further to satisfy your Lordship, and all mankind, of the sincerity of that conviction which has thus been called in question, I

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was always ready most solemnly and sincerely to declare before God and the world, as I now do, that in the prosecution of this undertaking I was actuated by the most complete and real conviction; and which, after the most mature consideration, still continues to animate my breast.

I did not chuse to intrude with my testimony, nor did your Lordship chuse to call for it, before the decision of this cause. At that time, it seemed suitable to my situation to abstain from giving voluntary evidence, even if such evidence could legally have been offered; but the decision has now removed every circumstance which might have then diminished the force of a testimony from one supposed to be concerned in the event.

There is now no object of interest to serve, there is nothing to prompt me but a regard to truth, and to my own honour unjustly attacked.

A material part of your Lordship's speech in the last stage of the cause, and in the very moment of decision, has in a manner called upon me for this testimony—I now give it under the deepest impression of the presence of an Intelligent and Overruling Power, from whom no thought or action is concealed, and to whom, both of us must be accountable for our conduct in this stage of our existence.

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## CONCLUSION.

I HAVE now, my Lord, unloaded myself of what must otherwise have remained a weight upon my mind during my life; I hope that hereafter, whatever your declared opinion may be as to the merits

merits of the cause itself, you will at least give me credit for the sincerity of the conviction which animated my conduct, and for the rectitude of the proceedings regulated by that conviction.

It is no light or trivial matter, my Lord, to traduce the character of an innocent man, jealous of his honour and reputation.

The attempt to do me this cruel injury, was attended with peculiar circumstances of aggravation.

The attack was made in the greatest and most august assembly in the world; it came from a person High in Office, and whose weight and authority was such, as would in most cases, whether justly or unjustly, have been sufficient to crush to pieces any private man.

It was directed against one, who had no opportunity of answering for himself, or of refuting your suspicions and assertions; nor a possibility of obviating the attack, for the imputations and the new ground taken up in this last stage of the cause, being such as never had been suggested by the counsel or judges in the original jurisdiction, it could not have been foreseen or expected that they were to be resorted to in the Court of Appeal.

It was directed against one, who had enjoyed the trust and confidence of many of the most respectable persons in both parts of this island; and who had hitherto possessed an unblemished reputation, together with the warm attachment of many valuable friends.

Could there be any thing more ungenerous, than an attack made upon such unequal terms? Could there be any thing more cruel, than an unprovoked, unwarranted attempt to deprive me of that reputation, and of those attachments, which I have ever valued more than life itself?

It can be no just excuse for this conduct, that the sacrifice of me, seemed necessary to dispose the minds

minds of men to an acquiescence in the opinion you gave upon the merits of the cause.—Impartiality and justice were due to me, as much as to the cause itself, or to either of the parties interested in the event.

I am not ashamed to own, that my sensibility upon this occasion has been stronger perhaps than it ought to have been ; some men in my situation, and with the same consciousness of innocence, would have been able to rest satisfied with that reflection ; they might have had such force of mind, as to view with indifference, the fate of the contest, and with contempt, the unjust attack upon themselves.—I have not reached these heights in philosophy ; all my attempts to attain them have been defeated by the superior force of those feelings which I have found too strong for me to combat.

I had never figured to myself, the possibility of meeting with an injury of this nature ; my mind was unprepared for it : The unexpected shock, and the conflict of the various passions excited by the injustice I met with, had almost proved fatal to me.

My constitution, impaired by the labours which preceded the period of the decision, had not strength enough to sustain the agitations occasioned by what past at that time. Though it be now more than three years since these unhappy events, it is only of late, that I have had health and spirits sufficient to support me in this painful task of addressing your Lordship.—A task doubly painful to me, because every line brings along with it the recollection of all the hardships and injuries sustained.

This is the apology I have to offer, for having so long deferred an address, which your Lordship had so good reason soon to expect.

My general motives for now entering upon this discussion have been already mentioned ; and if any further

further were requisite, there is one personal to myself, which, with every man capable of sympathy, will be allowed to be of some weight.

It is this : That during these three years I have made every effort to reconcile myself to the fate and incidents of this cause, or at least to blot them from my remembrance ; but from experience, I have found these efforts vain : the same experience has given me assurance, that I never could be able to regain my former happiness and peace of mind, without unloading my breast in the manner I have now done.

It may be an error or misfortune in constitution, that the attacks upon character or conduct, and the ideas of injustice suffered by ourselves or by our friends, should produce such deep and lasting impressions ; ——— But such is the constitution of my mind.

If, in the course of these letters I have sometimes mixed with the defence of myself, an attack upon your Lordship, it has been such only as was inseparably connected with the subject. I have not permitted myself to adopt the sentiments, or to follow the example of those, who declaim against you upon general or upon factious topics.

The facts and arguments upon which any charge has here been made against your Lordship, have been so fully presented to view, that it will be in vain for you ever to flatter yourself, that you are not called upon in the most pressing manner to refute me if that is in your power.

Attention to your own character, as well as to the satisfaction due to me, and to the public, require that your Lordship should dedicate some of your vacant hours to the discussion of the subjects of these letters. If you are able to prove, that they contain misrepresentations of you, or if you can shew that there is error in the facts, or fallacy

in the arguments employed by me, there can be little doubt that my wish of receiving an answer will be gratified.

If the multiplicity of your other affairs be assigned as an excuse for your avoiding to give any answer, there is yet one other method which may serve to afford me satisfaction, and may possibly do justice to yourself without consuming much of your time : It is to *publish to the world your speech or argument in the Douglas cause.*

If, after all your Lordship, instead of adopting either of these plans, shall chuse to wrap yourself up in silence, or to excite others to employ their talents in your defence, the world will be at no loss to penetrate your motives.

I have little doubt, that in the elevated and powerful situation you enjoy, surrounded by such numbers of friends or dependents, there will be found, amongst those who either have or wish to have your protection, some persons abundantly ready to enter the lists for you upon this occasion.

To these gentlemen, if any such should appear, I beg leave to address myself once for all, and to assure them, that every production on their part shall on mine remain unanswered, and be totally disregarded.

It is from your Lordship alone that I can receive the satisfaction which is due to me ; I am bound to answer every thing that comes directly from yourself, and equally bound to disregard what proceeds from others.

I cannot think of concluding without declaring the genuine state of my mind with regard to your Lordship : Neither malice, nor faction, nor deep-rooted personal dislike, have with me had any share in producing this address : On the contrary, it has not been without a large mixture of concern and regret, that I have myself perceived, or found it necessary



necessary to make others perceive, any real defects in your character or conduct.

Where nature has been so bountiful in bestowing her richest gifts of genius and of eloquence, it must affect every lover of humanity with regret to see these qualities degraded, or even the lustre of them obscured by any unfortunate or essential blemishes.

In declaring my sentiments so freely as I have done in the course of these letters, there has perhaps been too little attention to the dictates of vulgar prudence : Some of my friends, earnest for my prosperity in those things to which that phrase is commonly applied, have used every argument to dissuade me from this public address to your Lordship. Your distinguished power and influence, and the consequences of your enmity and resentment, have been painted to me in the strongest colours.— I know and admit the great extent of that power, and am aware, that by this step, which many will probably condemn as rash or imprudent, I may draw upon myself, not only your own resentment, but the bad offices also, of those who wish to prove their zeal, or to pay their court to your Lordship.—All this, and every consequence personal to myself, I have maturely weighed : But listening to the voice of honour, I find there is a superior call upon me thus to declare and vindicate the truth, even at the hazard of every future object of interest.

There is little merit indeed in giving the preference to a call of this nature, especially as I can with great truth assure your Lordship, that it is not in your power, nor in that of your friends, to make me uneasy by any exertion of your or their influence, though attended with prejudice to me in those objects of interest which are so generally and so ardently pursued.

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Without pretending to any uncommon degree of philosophy or of self-denial, I have had sufficient experience both of myself and of the world, to be able to form some notion of those possessions, as well as of that state of mind, which are best qualified to afford real satisfaction; and of this I am certain, that in my estimation, neither riches, nor power, nor splendor, attended with a bad or doubtful fame, have any allurements, comparable to that genuine satisfaction which belongs to an honourable conduct, joined with an unblemished reputation.

With these sentiments, it is much more easy for me, and even with little effort, to sustain any adverse incidents with respect to fortune or ambition, than to bear with injustice, or to overlook an iniquitous attempt to traduce my character:—Nor could I ever reconcile myself to the notion of tamely submitting to injury or insult from any quarter, however high and powerful the person may be from whom the injury proceeds.

Neither shall it be in the power of any man hereafter to say, that accusations to my prejudice had at a certain period of my life been thrown out against me, in the first assembly of the nation, without receiving from me the answer which they deserved.—It might justly be interpreted an acquiescence on my part, were I either to avoid such answer altogether, or to defer it until you had quitted this stage: or even until that period, when, either by the course of nature, or by the instability of human affairs, a decline of your abilities, or of your power and influence, might happen to take place. At such a period, any answer, especially if it partook of the nature of an attack, would deserve to be despised and detested as dastardly and ungenerous:—Such conduct, or the acquiescence under reproach, might be proper on the part of one who was conscious of having deserved the imputations:

tions; but, conscious as I am of innocence, and having so much reason to complain of unmerited injury and injustice, it is proper that the vindication of my character, however it may affect that of your Lordship, should be addressed to You whilst in full possession of your great abilities, and in the plenitude of your power.

I have the honour to be

Your Lordship's

Most obedient, and

Most humble servant,

Berkley-Square,  
12 Jan. 1773,

AND<sup>w</sup>. STUART.

LETTERS

LETTERS referred to in the preceding Letter, page 174.

*From the Honourable Charles Yorke.*

Dear Sir, Sunday, March 26th, 1769, Highgate.

SINCE I had the pleasure of seeing you, a friend from your country called on me, and said much of the disturbances at Edinburgh, and the insults to the *President*. After the example set in this part of the country, to resist the authority of *parliament*, I do not wonder at the efforts to weaken the dignity of an inferior judicature, though within its limits, and for the ordinary course of justice, supreme.—Let me beg of you one thing, as a friend; not to be too anxious, nor feel too much, because things impertinent or injurious are said of yourself.—Can any man exert his talents and industry in public or private business without staking his good name upon it? or at least exposing himself to the jealousy of contending parties, and even to their malice and detraction?—In these consequences do you experience more than the common lot? And why should you hope to be exempt from it?

No impartial man can read over the *papers* in the cause, with all the *private letters* and *memoranda* exhibited, and not stand convinced of the purity of your intentions, and the integrity and honour of your conduct. You could not have given evidence consistently with the rules of the Law of Scotland, by which the execution of the commission was regulated. If you could, some circumstances, which appear to me of little weight would have been explained.

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The council in Scotland for all parties, and the judges who differed on the merits from one another, *all* concurred in doing justice to your character, and declaring that you had acted uprightly, as well as ably.—This I am free to say every where, and say to you in this letter, merely because I think it, and because the sincere opinion of a friend, declared on such occasions so trying and important, is the genuine consolation of an honest mind,

For my self, I need not say, that I would not have urged some things at the bar of the House of Lords, as I did, if I had not felt the weight of them.—In such causes, an advocate is unworthy of his profession, who does not plead with the veracity of a witness and a judge.

I am, dear Sir, with great regard,

Your obedient humble servant,

(Signed) C. YORKE.

*From*

*From Mr. Solicitor-General Dunning.*

Lincoln's Inn, 27 May 1769.

— I Cannot write to you without expressing my hopes, that you have ere now taught your self to disregard the many injurious misrepresentations of your conduct in the Douglas cause, which I am sorry to learn are still circulated with some industry. It is not to be doubted, but that all imputations which are not founded in truth will be forgot, as soon as the animosity which gave birth to them has subsided.—In the mean while, though the best consolation is the consciousness of not having deserved them, it may perhaps be matter of some satisfaction to you, that those who have had the most occasion to examine them, think of them as you would wish;—perhaps too, some of them may be referable to the want of a sufficient explanation at the bar of particular passages, which have been made the grounds of censure; and if so, it is more particularly a debt of justice to you from the counsel in the cause, thinking of it as I do, to declare, that, after the fullest investigation which in that character it was my duty to make into every part of the cause, it appeared to me to have been conducted on your part, in a manner not only altogether irreproachable, but distinguished throughout by a degree of candour and delicacy of which I have met with few examples.

I am, with real esteem and regard,

Your very humble servant,

(Signed) J. DUNNING.

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*From*

*From Mr. Wedderburn.*

My dear Stuart, Broomhill, 22d May 1769.  
**I** HAVE read over here the News-paper account of the Lord Chancellor's speech in the Douglas Cause, which, in my opinion, he has more reason to be offended with than you have: It is the publication of one who had only capacity enough to retain those parts of the speech, which, I am persuaded, the Chancellor would wish to be least remembered.—Nothing ever was worse founded than any aspersions upon your conduct in that cause, which in its whole progress was carried on, not only with the strictest probity on your part, but with a candour and delicacy that very few men would have thought themselves bound to observe.—I have more than once thought, in the course of the inquiry, that you acted with too nice a sense of honour, in a contention with people who made no scruple to take every advantage, though I respected the principle upon which it proceeded. It was impossible you could escape abuse (let your conduct be ever so correct) at a time, when for much less interests, all characters are daily traduced, and personal invective is become a standing mode of argument.—I am sorry, upon their own account, that it should be adopted by those, who having felt what calumny is, should be cautious how they give a sanction to it.—Upon your account, I feel very little anxiety; because, besides the testimony of your own mind, you have the satisfaction to know, that all those who have been eye-witnesses of your conduct, not only justify it, but applaud it; that of the many judicious people who have studied the cause, very few indeed join in the reflections upon you; and that even your adversaries do your conduct

conduct that justice in private which in public they have sacrificed to the interests of their cause.— They have succeeded, and the decision must compel our submission ; but assent can only flow from conviction ; and the opinion I had entertained of the cause is not altered by any reasoning I have heard upon it.—My ideas of justice are a little perplexed by the decision, and I consider it as a striking example that no cause is certain or desperate.—You will probably be gone from London before I return to it ; and I could not help writing to you, as I shall not have an opportunity for some time of meeting you.

Adieu, my dear Stuart, and believe me ever,

Yours most sincerely,

(Signed) AL. WEDDERBURN.

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*From Sir Adam Fergusson,*

S I R,

I Cannot express the indignation I have felt at the attempts which have been made, especially since the appeal was entered in the House of Lords, to throw out aspersions on your conduct in the management of the Douglas Cause.—If these attempts had proceeded alone from your adversaries, or from the mere vulgar, I should have disregarded them, and thought them unworthy of notice ; because in the one I should have considered them as arts made use of to support their cause ; in the other, as owing to want of proper information. But when I have seen them supported by those whose situation naturally gives weight to their assertions, how void forever



ever they may be of any foundation in evidence, or even destitute of common candour, I look upon them in a very different light. It is for this reason, Sir, that I consider it as a testimony I owe to truth, to declare, that having had the fullest opportunity of considering every particular relative to the conduct of that cause, I have not only the most thorough conviction of the uprightness and integrity of your proceeding in every part of it, but think the whole has been conducted, not only with remarkable ability, but with a degree of candour, moderation, and temper, of which I know very few men who are capable.—This is a piece of justice which I have not the smallest doubt will, sooner or later, be done you by the world.—In the mean time, if a declaration of my sentiments can be of the least use to you, I chose to express them in this manner; and am, with the most real esteem, founded on those very qualities which have been so unjustly traduced.

Dear Sir,

Your most obedient humble servant,

St. James's Place,  
11th March, 1769.

(Signed) AD. FERGUSSON.

F I N I S.











